United States Court of Appeals for the Second Circuit



APPENDIX

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT 74-2006

SUSAN WAGNER LEISNER, KARIN MALINOWSKI, LINDA GEDEON, GECILIA HUROWITZ, MYROSLAWA WANIO, VICTORIA PRINCIPE, MARGARET KECK MILKMAN and JANE BOOTH, individually and on behalf of all other persons similarly situated,

Plaintiffs,

Docket No. 74-2006

- against -

NEW YORK TELEPHONE COMPANY,

Defendant.

JOINT APPENDIX

P

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PAGINATION AS IN ORIGINAL COPY

INDEX TO JOINT APPENDIX

| | Page |
|--|------|
| Docket Sheets | A-1 |
| Complaint | A-5 |
| Consent Judgment dated September 19, 1973 | A-16 |
| Agreement of Settlement dated August 3, 1973 | |
| Affidavit of Harriet Rabb dated February 5, 1974 | 1-37 |
| Affidavit of Cecilia Hurowitz dated February 26, 1974 | 4-40 |
| Memorandum for Plaintiff Hurowitz and the Exhibits Annexed Thereto | -42 |
| Reply Memorandum on Distribution of Settlement Monies | -68 |
| Order of Judge Motley filed March 15, 1974 | -73 |
| Affidavit of Harriet Rabb dated May 17, 1974 | -74 |
| Affidavit of George Cooper dated May 17, 1974 | -85 |
| Affidavit of Harriet Rabb dated May 20, 1974 | -91 |
| Proposal | -118 |
| Transcript of Hearing Before Judge Motley on May 17, 1974 | -119 |
| Transcript of Hearing Before Judge Motley on May 20, 1974 | -142 |
| Post-Hearing Memorandum for Plaintiff Hurowitz | |
| Memorandum Opinion and Order of Judge Motley dated June 12, 1974 | -199 |

Filed: July 16-14

CIVIL DOCKET

CLASS ACTION

-- UNITED STATES DISTRICT COURT

JUDGE MOTLEY

72 CV. 212

TITLE OF CASE SUSTA WASHIR, LEISNER, KAREN MALINOWSKI, LINDS-GEDERGE For plaintiff: CECILIA HUROWITZ, MYROSLAWA W.NIO, VICTORIA PERHOTPE MARGARE T KECK HILBMAN, AND JANE BOOTH, THUIVIDUALLY NID ON REHALF OF ALL OTHER PERSONS STREET, 435 WEST 116th 85% NIY.C. N.Y. 10027 AGA INST, NEW YURK TELEPHONE COMPANY For defendant: Proskauer Pose Goetz & Handelsohn 300 Park Avenue 10 8-7300 Ints. J.S. 5 mailed Clerk J.S. 6 mailed Marshal Basis of Action: UIVIL h. 3.75 Docket fee Witness fees Action arose at: Depositions

72 UV. 212

| DATE | PROCEEDINGS | Date the |
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| MAYIE-72 | FILED COMPLAINT. ISSUED SUMP ONS. | |
| May 18 7 | 2 Filed Order appointing Susan Direc to serve process. Clerk. | |
| May 1.0-72 | 2 Filed Order appointing Susan Direc to serve process. Clerk. Filed Order to Show Cause re: Fre. Inj. Met. 5/30/72. (by pltfs.) | |
| lay 18.72 | Filed Order Allowing the taking of an early deposition. XXAXX So Ordered Frankel J. (mailed Notice) | |
| Fay 21,-72 | | 2 |
| | and 6/20/72 respectively; ordered that deft. is granted leave to apply for | |
| 7 | Curther adjournments as indicated. Frankel, J. (mailed notice). | |
| Jun 5.72 | riled bet Application for adjournment. | |
| Jun 5.72 | wiled pliffe Movorandum in epposition to the dit s request for a | |
| | second adjournment of the a notice of deposition a motion for a | |
| | preliminary injunction heuning. | 40 |
| Jun 5.72 | Filed Memorandum & Order. Motion for a preliminary injunction is #2 | 8/72 |
| | adjourned to 7/3/72, etc., Dft's time to answer is extended to 6/2 | |
| 7.5.702.70 | So Ordered Frankel J. (mailed notice) Filed stipulation and order adjourning pits'-request and motion for a preliminar | v |
| Jun 20-12 | injunction. So ordered. Frankel, J. | |
| In 28 7 | ? Filed Dit. Notice of Motion RE: Dismissing Complaint, etc Ret. 7/11 | 172 |
| Jun 28 7 | ? Filed Memorandum of Law in support of dft's motion to dismiss the | |
| | complete. | |
| 101 14-7 | Priled nieff's affic vit 'notice of motion -Class action ret.8-29-7 | 2 |
| 1 1 1/.:- 7 | to rilad nieffe a memorandum of law in support of his motion reco-22- | 2 |
| 1 7/ - / | Riled affidavite by deft. In opposition to pittl's motion | Ę, |
| 1110 2/1.7 | 9 Filed defet smorandum in constition to picts s motion | f-· |
| Aug. 24-1 | 2 Filed attidavits by delt, in opposition to pittl's motion for a, | |
| | preliminary injunction. | - |
| Aug. 24-1 | 2 Filed deft's memorandum of law to opposition to pltff's motion for, | 1 |
| 1 | a preliminary injunction. 2 Filed pltfif's memorandum of law in opposition to deft's motion to | |
| 1708-57 | disside | |
| Sep. 25-7 | l dismiss. | |
| 6-72 | Filed ploff's affidavits & notice of motion (show cause order) unsign | ed) |
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| Oct. 6-72 | wiled memo-endoreed on pitff's notion RE: Interrogs: The within mot | non. |
| | is to be treated as a motion made in the usual course, Dete s are | LO |
| | respond to the interrogs served upon them within the time provided | |
| 3 | by the Fed. R. Cly.P. The motion for a prelindnery injunction will | m/n |
| 1 | be heard on November 27,19/2 at 2;30 P.M. So ordered, Motley, J. | |
| Oct. 11-) | 12 Filed U.S. Equal Employment Opportunity Comm. motion for leave to | |
| 1.0 | 1 L-Court Vivilous 7 | |
| Ont 20-7 | 77 wiled pitti s wearender in support of his motion for preliminary, | |
| 4 | 2 Filed sup & crow chart deft's time to answer pltff's intervogs is | |
| J Nov. 6-7 | 2 Filed sup & order that deft's time to answer pitth & intervogs 18 | + |
| | ext. to 11-9-72. So ordered. Motley, J. | - |
| " Hov. 13- | 72 Filed pittl's milidavit & reside of motion to compel enswers to | + |
| ,1, | Interroys ret. before foctey, J. on 11-15-72. | 5-72 |
| . lov. 13-/ | 72 Filed defe's objections to inverrega. | 1 |
| 07 17-7 | 2 Filed memorandum in opposition to metion to dismiss as amicus curia | e |
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| . W. 3t- | forthed defer a supplemental mesorendum in opposition to pitte s more | T., |
| ov.39- | 72 filed supplemental firedovid of J.J Rugues in opposition to press | 3 |
| | not lon | |
| 1 Nov. 30 | 73 Filed supplemental affidavit of D.F. Carbone Re: pltff's memorandu | |
| 14 | • Cone'd on page #3 | |

| | PROGRAMMENT AND | | | | | | | |
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| Nov. 27-72 | Before Motley, J. Hearing for Preliminary Injunction begun . | | | | | | | |
| Nov. 28-72 | Beron | e Motle | y, J. Heari | ne for | Dec 14 | | = | |
| Nov. 29-72 | near | ing con | tinued. | B -vor I | rerim | mary. | Injunction | begun . |
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| DATE | PROCEEDINGS . | Date Orr Judgment |
| July 16-71. | Filed pltff. Cecilia Hurordtz p etition and affdyt, in support of motion on | |
| | appeal in forma pauperis. | |
| 11y 15-74 | Filed Order that pltff. Cocilia Eurowitz is authorized to appeal this action in | |
| A Ly 16-71. | forma pauperis. DUFTY, J. Filed pltff Cecilia Marowitz notice of appeal from order and opinion entered on 6-18-7h. Copy to: Marriet Pabb Esq., optored 2-12-2h. | |
| | on 6-18-7h. Copy to: Harriet Pabb, Esq. entered 7-17-7h. | |
| May 20-74 | Filed plaintiffs' Affidavit regarding distribution of settlement monies among the | |
| | Trace of del stenoxiaphic transcript of the aforementioned aroundings be | pltfs |
| | the expense of the UNITED STATES. STEWART I (m/n) | a at |
| Aug 7-74 | Filed plaintiffs' reply memorandum on distribution of settlement montes | |
| Aug 7-74 | Filed plaintiffs: Affidavit re: ettornev's fees | |
| Aug 7-74 Aug 7-74 | Filed transcript of record of proceedings dtd: May 17-74. | |
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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

72 CV. 2127

SUSAN WAGNER LEISNER, KAREN MALINOWSKI, LINDA GEDEON, CECILIA HUROWITZ, MYROSLAWA WANIO, VICTORIA PRINCIPE, MARGARET KECK MILKMAN, and JANE BOOTH, individually and on behalf of all other persons similarly situated,

Plaintiffs,

COMPLAINT .-- CLASS ACTION

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-against-

NEW YORK TELEPHONE COMPANY,

Defendant.

I. NATURE OF CLAIM

1. This is a proceeding for declaratory and injunctive relief and damages to redress the deprivation of rights secured to the plaintiffs by Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.). Plaintiffs seek a declaratory judgment and injunction to restrain defendants from maintaining practices, policies, customs and usages which discriminate against plaintiffs and members of their class because of their sex with respect to hiring and conditions of employment.

II. JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(4) and 28 U.S.C. §§ 2201 and 2202. Jurisdiction to grant injunctive and declaratory equitable relief as well as damages is invoked pursuant to 42 U.S.C. § 2000e-5(f) and (g). The amount in controversy

exceeds \$10,000.

III. CLASS ACTION ALLEGATIONS

- 3. Plaintiffs bring this action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure on their own behalf and on behalf of all other persons similarly situated. The members of this class, which has at least two hundred members, are too numerous to be joined in one action. The class is composed of all women who are qualified for maragement positions in the Traffic Department of New York Telephone and who are now, have recently been and/or who will in the future be employed by the New York Telephone Company (hereinafter "the Company") at management level positions in the Traffic Department.
- 4. Plaintiffs Leisner, Malinowski, Gedeon, Wanio, Principe, Milkman and Booth, all women, are currently employed by the defendant in the Traffic Department and all of them hold management level positions. Plaintiff Hurowitz was employed by the Company between March 15, 1971 and April, 1972, and during that time occupied a management level position. All except two of the plaintiffs, Ms. Leisner and Ms. Booth, entered the Company at grade level 5 while, upon information and belief, similarly qualified males were being hired into the Company at grade level 10 and above. None of the plaintiffs, at entry into the Company, was assigned to the management training program [called "Management Development Program"], and only one of the plaintiffs was given a filed assignment when hired. For these reasons the plaintiffs will fairly and adequately protect the interests of their class in this action for declaratory and injunctive relief and their claims are typical of the claims of the other members of the class.

The questions of law common to the above-described class are whether or not the hiring, placement, training, salary and promotion practices of the defendant deprive the members of the class of civil rights secured to them by the U.S. Constitution, and 42 U.S.C. §§ 2000e et. seq. by denying them management positions and salaries granted to similarly qualified men, and whether or not the defendant has harrassed and retaliated against the plaintiffs for asserting these rights in violation of 42 U.S.C. § 2000e-3.

The defendant has acted, or refused to act, on grounds generally applicable to the class, thereby making appropriate injunctive and declaratory relief with respect to the class as a whole.

IV. PLAINTIFFS

- 5. Plaintiffs are all women who currently hold or have recently held management positions in the Traffic Department of New York Telephone and who are qualified for management positions in the Company.
- a) Plaintiff Susan Wagner Leisner is now an Assistant Dial Service Supervisor, Level 7, with a field assignment. For the first six months of her employment with the Company Ms. Leisner was an instructor at the Dial Traffic Training School, a staff assignment. Ms. Leisner holds a Bachelor of Arts degree.
- b) Plaintiff Karen Malinowski is now Facilities Assistant, a level 5 field position. Ms. Malinowski spent the first three months of her employment with the Company as a Dial Assignment Supervisor ('DAS'), a level 5 staff position. Ms. Malinowski holds a Bachelor of Arts degree.
 - c) Plaintiff Linda Gedeon is currently a

Facilities Assistant, a level 5 field position. Ms. Gedeon was hired as a DAS, and spent one month as an instructor in the Company's Traffic Dial Training School, a staff assignment, followed by seven months in a second staff assignment in the Southern Dial Division Office. She holds a Bachelor of Arts degree.

- d) Plaintiff Victoria Principe is currently a Dial Assignment Supervisor, a level 5 field position. During her first four months of employment, Ms. Principe was an instructor at the Company's Traffic Dial Training School, a staff assignment. Ms. Principe holds a Bachelor of Arts degree.
- e) Plaintiff Margaret Milkman is currently a Facilities Assistant, a level 5 field position. Ms. Milkman was hired as a DAS and attended the Company's Ten Week Training Course in Manhattan during February and March of 1971. Ms. Milkman holds a Bachelor of Arts degree.
- f) Plaintiff Jane Booth is presently an Assistant Dial Services Supervisor, a level 7 field position. During the first six months of her employment Ms. Booth taught at the Company's Traffic Dial Training School, a staff position. She holds a Bachelor of Arts and a Master of Arts degree.
- g) Plaintiff Myroslawa Wanio is currently a Dial Assignment Supervisor, a level 5 staff position. She holds a Bachelor of Science degree.
- h) Plaintiff Cecilia Hurowitz began working at the Company on March 15, 1971 and was, until April 1972, a Dial Assignment Supervisor, a level 5 staff position. Her duties were to teach at the Company's Traffic Dial Training School. Ms. Hurowitz holds a Bachelor of Arts degree.

V. DEFENDANT

6. Defendant is the New York Telephone Company, with specific acts of discrimination charged against one of its major functional components, the Traffic Department. Responsible for overseeing day-to-day telephone operations, the Traffic Department has statewide jurisdiction. The corporate headquarters of New York Telephone Company are located at 140 West Street in Manhattan.

VI. STATEMENT OF CLAIM FIRST CAUSE OF ACTION

For their first cause of action plaintiffs allege that the defendant New York Telephone Company in its Traffic Department consistently:

- 7. Maintains sex-segregated levels of management.
- 8. Places women into management positions which upon information and belief are not now and never have been occupied by men.
- 9. Labels as "management" positions jobs which are in fact secretarial and clerical and are filled almost exclusively by women.
- 10. Places men and women with equal qualifications into unequal jobs. Upon information and belief men are consistently hired at higher management levels and consequently receive higher salaries and better opportunities for promotion than women with equal qualifications.
- 11. Assigns newly hired women to staff jobs, time spent in which does not count toward promotion. Upon information and belief, men newly hired by the department are assigned directly to promotion-enhancing field jobs.
 - 12. Accords favorable consideration for military

experience to male employees when making placement, promotion and salary decisions. Upon information and belief, many males now working at levels 10 and above sought employment with the Company in response to Company advertisements in the newspapers seeking "Former Officers."

- 13. Assigns women with much greater frequency than men to positions of teaching non-management personnel. Men are instead assigned to training programs where they are trained for more responsible positions with the Company.
- almost all were immediately assigned to a staff position teaching operators at the Company's Traffic Dial Training School. During such time, their job performance did not count toward promotability and some plaintiffs have not yet been assigned to the field positions from which promotion becomes possible. The policies described in paragraphs 7-13 are part of a pattern and practice of sex discrimination utilized by the defendant, New York Telephone, in its Traffic Department, and constitutes a violation of 42 U.S.C. § 2000e-2(a) and the interdictions of that statute against hiring, limiting, classifying or segregating employees on the basis of their sex.

SECOND CAUSE OF ACTION

Plaintiffs releat and reallege all narrative facts in ¶ 7-13 and allege for a second cause of action that:

15. Defendant has in the past maintained training programs and facilities which discriminate against women on the basis of their sex. The last group from the Traffic Department to participate in the now-expiring Management Development Program consisted of 49 individuals at levels 10 and above. Only one of these was a woman.

16. Defendant has also maintained a training facility at Nyack, New York which has been attended by participants from the Management Development Program and other individuals selected by the Company. Upon information and belief, the overwhelming majority of those attending the Nyack Course are male. Only an insignificant minority are female.

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- 17. Defendant now maintains a multi-level training program which discriminates against women on the basis of their sex. The newly organized Career Development Program ("CDP") offers different content and promotion opportunities to management personnel at the 5-7 and the 10-21 levels. This separation on the basis of management levels discriminates against women and hurts their chances for promotion since well-qualified women have been consistently initially placed at lower levels than men with similar qualifications, i.e. at 5 or 7, while men, at entry, are assigned to levels 10 and above.
- assigned to participate in the Career Development Program ("CDP") in which they are trained in management skills with other level 5's and 7's. Employees at levels 10 and above in the same program but in a separate course are given more intensive training preparing them for higher positions in the Company. Men with qualifications similar to plaintiffs' who entered the Company at the same time as plaintiffs but received initial assignments at level 10 or above currently enjoy the more intensive training and advancement aspects of the level 10 and above CDP. The next meeting of both CDP groups is May 18, 1972.
- 19. The policies described in ¶ 15-18 are part of a pattern and practice of discrimination in training

programs maintained by the Company and constitute a violation of 42 U.S.C. § 2000e-2(d).

THIRD CAUSE OF ACTION

Plaintiffs repeat and reallege all narrative facts in paragraphs 7-18 and allege for a third cause of action that:

- 20. Defendant engages in a pattern of harrassing employees who assert rights guaranteed them under Title VII of the Civil Rights Act of 1964, and has, with regard to plaintiffs in this action, threatened and harrassed them for participating in an action against the Company.
- 21. All plaintiffs in this action have been subject to harrassment by the defendant as, for example, nearly all have been called into conferences by their supervisors, asked questions regarding their involvement in the present action, chastised for not processing their grievances through company channels and offered inducements to settle the suit. All were informed that involvement in any action would jeopardize their future employment with the company.
- 22. Upon information and belief, harrassment of these plaintiffs will continue with regard to their continued employment with the company, including future determinations as to salary and promotion.
- 23. The policies described in paragraphs 20-22 are part of a pattern and practice of harrassment utilized by defendant against employees who assert their rights under Title VII and constitutes a violation of 42 U.S.C. § 2000e-3 and the interdictions of the statute against discrimination by an employer against an employee who has opposed an unlawful employment practice and/or made a charge against the employer under Title VII.

VII. PROCEDURAL REQUIREMENTS

24. Plaintiffs filed timely complaints at the New York State Commission on Human Rights and at the Equal Employment Opportunity Commission. Plaintiff Leisner received a permission to sue letter from the EEOC on May 17, 1972. (See Exhibit 1 attached hereto). All other named plaintiffs are members of the class and they will receive their suit letters from EEOC, upon information and belief, within the next 10-22 weeks.

VIII. RELIEF

Wherefore Plaintiffs respectfully request that this Court:

- A. Rule that the matter is properly maintained as a class action.
- B. Enter a judgment declaring that the acts and practices of Defendant New York Telephone are in violation of the laws of New York and the United States.
 - C. Issue a preliminary injunction
- (i) Ordering Defendant to admit all named incumbent Plaintiffs to the Career Development Program currently in progress for personnel in management levels 10 and 21, and give Plaintiffs the background necessary to enable them to successfully participate in this program;
- (ii) Ordering Defendant to cease threatening and harassing or penalizing Plaintiffs for their participation in this action against Defendant, and specifically to reopen Plaintiff Leisner's yearly review and remove the penalty imposed upon her because of her participation in this action;
- (iii) Requiring Defendants to promote Plaintiffs
 Leisner and Booth immediately to level 21, and to promote

Plaintiffs Gedeon, Principe, Wanio, Milkman and Malinowski immediately to level 10, the levels which they would now occupy had they been hired, assigned, and promoted on an equal basis with men hired contemporaneously with Plaintiffs;

- (iv) Requiring Defendant immediately to give the incumbent Plaintiffs duties, powers, and responsibilities, and salary and benefit increases commensurate with their new management levels, and to give Plaintiffs the background and/or additional training necessary to enable them to successfully perform in their new capacities and to compete effectively for higher positions.
- (v) Requiring Defendant to immediately cease hiring or assigning any new employees at, or promoting any incumbent employees to levels 7 through 25 in the Traffic Department of New York Telephone, pending the outcome of this litigation.
 - D. Issue a permanent injunction
- (i) Requiring Defendant to award the named Plaintiffs back pay equal to the difference between the salary paid to men with equal qualifications hired at the same time as Plaintiffs and the salary received by Plaintiffs since the beginning of their employment with the Company;
- (ii) Requiring Defendant to place all members of the class into the positions for which they are qualified and which, but for the Company's acts of discrimination, they would now occupy;
- (iii) Requiring Defendant to begin paying all members of the class a salary commensurate with their new positions and to award them back pay;
- (iv) Requiring Defendant to give all members of the class responsibilities commensurate with their new positions;

(v) Requiring Defendant to institute training programs immediately which are designed to compensate for the lost on-the-job training and experience which class members would have acquired had they been earlier assigned to higher positions and to give the newly promoted women the background they will need to compete effectively with the men now occupying such positions;

(vi) Requiring Defendant to assign men on the same basis as women are assigned to teach at the Traffic Dial Training School;

(vii) Requiring Defendant to cease using military service as a criterion of placement, promotion and or salary determination;

(viii) Requiring Defendant to assign men and women to field and staff positions on an equal basis and institute an affirmative action plan requiring defendant to hire and promote women until they achieve a representative proportion of the employer's total management work force at all levels.

- * E. Grant Plaintiffs and the class they represent such other and further relief as may be necessary and proper.
- F. Award Plaintiffs the costs of this action together with reasonable attorney's fees as provided in § 706(k) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(k).

Respectfully submitted,

Harriet Rabb George Cooper 435 West 116th Street New York, N.Y. 10027

Richard M. Leisner 120 Broadway New York, N.Y.

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK



SUSAN WAGNER LEISNER, KAREN MALINOWSKI, LINDA GEDEON, CECILIA HUROWITZ, MYROSLAWA WANIO, VICTORIA PRINCIPE, MARGARET KECK MILKMAN and JANE BOOTH, individually and on behalf of all other persons similarly situated,

: 72 Civ. 2127

CONSENT JUDGMENT

Plaintiffs,

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-against-

NEW YORK TELEPHONE COMPANY,

Defendant.

Upon the consent of the plaintiffs above-named and of the defendant, endorsed below, and the Agreement of Settlement, dated August 3, 1973, entered into by the plaintiffs above-named and defendant and annexed hereto as Exhibit Λ , the parties having waived findings of fact and conclusions of law and without any admission on the part of defendant of any wrongdoing, it is

ORDERED, ADJUDGED AND DECREED that such Agreement of Settlement is hereby adopted as the judgment of this Court, as though fully set forth herein, in full settlement and compromise of the claims of the plaintiffs above-named, that the claims of all other members of the plaintiff class are hereby dismissed without prejudice and that no party

shall recover costs as against any other party.

Dated: New York, New York

August 1973

September 19,1973

Constance Baker De Cotte

We consent to the entry of the foregoing Judgment.

Harriet Rabb Attorney for Plaintiffs

Proskauer Rose Goetz & Mendelsohn Attorneys for Defendant

By Morton M. Maneker

August 3 , 1973

Howard L. Ganz

JUDGMENT ENTERED SEP 1 9 1973

Saymond F. Burghardt

AGREEMENT OF SETTLEMENT

THIS AGREEMENT, made and entered into this 3rd day of August, 1973, among SUSAN WAGNER LEISNER, KAREN MALINOWSKI, LINDA GEDEON, CECILIA HUROWITZ, MYROSLAWA WANIO, VICTORIA PRINCIPE, MARGARET KECK MILKMAN and JANE BOOTH and NEW YORK TELEPHONE COMPANY (hereinafter the "Company").

WHEREAS the parties hereto are plaintiffs and defendant in a civil action entitled Leisner et al v. New York Telephone Company, now pending in the United States District Court for the Southern District of New York (Index No. 72 Civ. 2127); and

WHEREAS said parties desire to resolve, settle and compromise the claims made in such civil action by the individuals above-named;

NOW, THEREFORE, in consideration of the covenants herein expressed, it is mutually agreed as follows:

- I. Relief for Named Plaintiffs Still Employed by the Company or Other Bell System Companies*
- A. Plaintiffs Principe and Wario
- 1. When this agreement takes effect, plaintiffs Principe and Wanio shall be promoted to permanent** Grade 7 Assistant Dial Service Supervisor positions.
- 2. Upon such promotions, plaintiffs Principe and Wanio shall receive promotional salary increases of \$2,000 or the salary increases provided in Section V plus promotional salary increases of 6% (plus earned increment), whichever is greater.

During the pendency of this action, four of the named plaintiffs resigned from the Company and did not seek employment with other Dell System Companies.

^{**} When used herein, "permanent" means "as opposed to acting."

- 3. Upon promotion, plaintiffs Principe and Wanio shall receive special supervisory and technical training as described in Section III-C.
- 4. Plaintiffs Principe and Wanio shall at an early date be scheduled for assessment at an Assessment Center in accordance with the provisions of the Philadelphia Decree.*

 If assessed satisfactorily (as determined in accordance with the provisions of the Philadelphia Decree), plaintiffs

 Principe and/or Wanio, as the case may be, shall be promoted to permanent Grade 10 positions no later than August 1, 1974.
 - B. Plaintiffs Gedeon and Malinowski
- 1. To the extent not already accomplished, the Company shall use its best efforts to arrange for plaintiff Gedeon to be placed, when this agreement takes effect, in a permanent Grade 7 position (or its equivalent) at the Bell System company by which she is then employed.
- 2. The Company shall use its best efforts to have plaintiffs Gedeon and Malinowski scheduled at an early date for assessment at an Assessment Center in accordance with the provisions of the Philadelphia Decree. If assessed satisfactorily (as determined in accordance with the provisions of the Philadelphia Decree), the Company shall use its best efforts to arrange for their promotion, to the extent not already accomplished, to permanent Grade 10 positions (or their equivalent) no later than August 1, 1974 and for special training or assistance to facilitate the successful performance of their new job duties.
 - II. Payments by the Company to Plaintiffs and Their Attorneys and Releases by Plaintiffs
- A. Within 10 days following the date this agreement takes effect, the Company shall pay to plaintiffs and

their attorneys the sum of \$52,100 in the form of a check payable to the order of Harriet Rabb, as attorney.

B. Upon the receipt of such sum, plaintiffs' attorneys shall provide the Company with releases executed by each individual plaintiff, which shall release the Company from any and all liability based upon any claim (including claims for attorneys' fees and expenses) arising or alleged conduct occurring prior to the date this agreement took effect.

III. Special Upgrading and Associated Training Programs

- A. Immediately upon the effective date of this agreement, all women hired, between January 1, 1968 and the date of execution of this agreement, directly into Traffic management in Grade 5 positions and still employed in Grade 5 Traffic management positions shall receive salary increases of 6% (plus earned increments) in anticipation of promotions to permanent Grade 7 positions, which promotions shall be made, without further promotional salary increases, within six months of the effective date of this agreement. (In the case of any woman on leave or disability absence as of the date specified for a salary increase and/or promotion, such salary increase and/or promotion, as the case may be, shall not be effective prior to the individual's return to work).
- B. As of the effective date of this agreement, women who were hired at any time prior to the date of execution of this agreement directly into Traffic management in Grade 5 or Grade 7 positions and who are still employed in Grade 5 and Grade 7 positions in Operator and Business Services will be given an opportunity to transfer to Grade 7 positions that become available in Dial Services. The transfer program will operate as follows:

1. Within 15 days of the effective date of this agreement, the Company shall send to all Grade 5 and Grade 7 Operator and Business Services personnel (as described above), who have not previously worked in Dial Services and who have not, since April, 1973, been offered an opportunity to work in Dial Services, a letter inquiring as to their interest in transferring to Grade 7 positions that become available in Dial Services. Said letter shall indicate that training and assistance will be provided to facilitate the performance of new job duties, and shall contain or be accompanied by a form for an affirmative or a negative response. Prior to the dissemination of said letter, it shall be submitted to plaintiffs' counsel for approval, which approval shall not be unreasonably withheld.

(D)

- 2. Within 60 days of the effective date of this agreement, those women indicating an interest on the appropriate form in transferring, shall, if the Company deems it necessary, be tested for mathematical aptitude. The test to be utilized will be the School and College Ability Test (SCAT) and any woman achieving a score of 50% or above will be considered eligible for transfer.
- 3. During the period commencing 90 days after the effective date of this agreement and terminating December 31, 1976, 50% of the Grade 7 Dial Services vacancies which are filled in each Territory of the Company shall, to the extent there are in such Territory women eligible for transfer pursuant to Sections III-B-1 and III-B-2, be filled by such women. Where a promotion accompanies such a transfer, a promotional increase of 6% (plus earned increment) will be given. The eligible women within each Territory shall be offered the opportunity to transfer into Dial Services prior to the filling

of Grade 7 Dial Services vacancies in such Territory by outside hire. C. To facilitate the successful performance of their new duties, each of the women promoted and/or transferred under Sections III-A and III-B of this agreement shall be given an individualized training program developed by the Company. In the case of women to be promoted pursuant to Section III-A, such programs shall vary in length from approximately 23 to 36 days of instruction and shall be completed within 12 months of the effective date of this agreement. In the case of those women transferred to Dial Services pursuant to Section III-B, the training (which shall be of approximately the same duration as that provided women promoted pursuant to Section III-A) shall be completed within 12 months of that transfer. In both cases, the programs shall be drawn from the following technical and supervisory courses (and such other similar courses as may be developed): Technical (1) Switching Systems Measurement (2) Traffic Systems Concepts Course (3) Time Sharing Computer Appreciation (4) Panel Appreciation (5) Panel Administration (6) Number One Crossbar Appreciation (7) Number One Crossbar Administration (8) Number Five Crossbar Appreciation (9) Number Five Crossbar Administration (10) Crossbar Tandem Appreciation (11) Electronic Switching System Appreciation (12) Electronic Switching System Administration (13) Trunk Network Tandem Appreciation Supervisory (1) Basic Principles of Supervisory Management (2) Instruction Training Seminar (3) Communications Workshop (4) Public Speaking (5) Video and Roleplay Workshop (6) Managing and Understanding New Employees (7) Supervisory Decisions, Actions and Growth (8) Grievance Workshop (9) Effective Presentations for Supervisors A-22

IV. Goals and Timetables

A. As more fully described below, in order to actate the advancement of women within Traffic management, Company shall establish percentage "fill-rate" goals for in certain categories of Traffic management as listed in the Lon IV-E. It shall be the Company's goal to have women a designated percentage of the vacancies (as defined in the Delow-listed management categories of the period from January 1, 1973 through the termination specified in Section IV-F. Thus, for example, if the intage fill-rate goal for a particular management category during a period specified below and 100 vacancies are do in that category during such period, the Company's goal be to have women fill at least 40 of such vacancies. If the fewer vacancies are filled in any category, the Company's shall be to have a woman fill at least one of the vacan-

B. The fill-rate goals established by this agreere not intended as inflexible minimum or maximum quotas,
ther as objectives reasonably attainable by mobilization
i'able Company resources and a good faith effort. If
gative deviation from the established goals in any perecified is 2 percent or more (i.e., if, for example, the
s 40% and the actual fill-rate is 38% or less), then the
cons of Section IX-F (concerning reporting) become efe. In any proceeding concerning a negative deviation,
dintiffs will bear the burden of going forward with evif such deviation, and the Company will bear the burden
g forward with evidence that it mobilized available
resources and engaged in a good faith effort to attain
l-rate goal(s) in question. Where calculation of the
of jobs to be filled by women does not result in a sim-

A-23

ple whole number, cond decimal point to the next lower shall be rounded of

C. Failureliance upon the mative suitable for the Control of the C

D. Vacan

promotion, or loss ment for the additing job category. Vaca of an employee from to 2nd Level) or a low (e.g., from admilst Level), by transiting from other positing the case of job category are also filled by side such job category set forth below, the to Grade 21 as a reager-Operator Service considered as having

E. Fill-

Category

Category I:

3rd Level and above

the calculation shall be carried to the sefractions below .50 shall be rounded off number while fractions equal to or above .50 of to the next higher whole number.

are to meet goals may not be justified by management assessment center procedures or placement, or promotion criteria which discess such criteria are job-related and alterteria less disadvantageous to women are uncompany's use.

cies are created by the transfer, permanent of an employee or the approval of manageon of a position (growth) in the particular ncies are filled by the permanent promotion a lower job category (e.g., from 1st Level lower job classification not specified beinistrative, non-supervisory management to sfer or promotion to positions in Category tions in 2nd Level, or by a direct hire. In egories specified in Section IV-C, vacancies the transfer or promotion from a job outories. For purposes of the fill-rate goals e 90 employees upgraded as of July 1, 1973 sult of the upgrade of the position of Mances (formerly, Chief Operator) shall not be filled vacancies at 2nd Level.

Rate Goals for Women in Traffic

Fill-Rate Goal

40% of the vacancies filled during the period from January 1, 1973 through the termination date specified in Section IV-F, as an aggregate

A - 24

Category II:

2nd Level (all positions)

48% of the vacancies filled during the period from January 1, 1973 through December 31, 1974, as an aggregate, and 48% of the vacancies filled from January 1, 1975 through such termination date, as an aggregate

Category III:

2nd Level - Only Traffic Superintendent positions and Traffic Supervisor positions involving the same job content (i.e., managerial operating as opposed to staffresponsibilities) 48% of the vacancies filled from January 1, 1973 through such termination date, as an aggregate

Category IV:

1st Level (all positions)

62.5% of the vacancies filled during the period from January 1, 1973 through December 31, 1974, as an aggregate; 65% of the vacancies filled during the calendar year 1975; and 65% of all the vacancies filled during the calendar year 1976 and any additional period through such termination date, as an aggregate

Category V:

lst Level - All positions other than Manager-Operator Services (formerly, Chief Operator) 55% of the vacancies filled during the period from January 1, 1973, to December 31, 1974, as an aggregate; 55% of the vacancies filled during the calendar year 1975; and 55% of the vacancies filled during the calendar year 1976 and any additional period through such termination date, as an aggregate

F. The fill-rate goals for women set forth above shall continue in effect until a total of 120 vacancies in the categories described shall have been filled or until December 31, 1976, whichever is later.

G. Fill-Rate Goals for Men

| TI | affic Management Category | Fill-Rate Goal |
|----|------------------------------------|--|
| | Manager-Operator Services | 10% of the vacancies fill- ed during the period from January 1, 1973 through December 31, 1974, as an |
| | | aggregate and 10% of the vacancies filled during each calendar year there- |
| | Management Positions in Grades 5-7 | after through December 31, |

- H. Achievement of the fill-rate goals set forth shall not be considered in conflict with any other agreement setting forth lesser goals.
 - V. Salary Increases for Women Hired Directly Into Traffic Management at Grade 5 or Above Since January, 1968
- A. The Company will, on the first day of the month following the effective date of this agreement, increase the annual salary of each woman employed in Traffic Management, who was hired directly into a Traffic Management position at Grade 5 or above from January 1, 1968 through December 31, 1972, by the amount set forth next to the year of her hire:

| 1968 | - | \$1,100 |
|------|---|---------|
| 1969 | - | \$1,000 |
| 1970 | | \$ 900 |
| 1971 | - | \$ 450 |
| 1972 | - | \$ 450 |

B. Such increases shall be given effect before calculating the amount of the promotional increases provided for in Sections I-A-2 and III-A.

VI. No Harassment or Retaliation

A. The Company agrees that it shall not harass or retaliate against any plaintiff or other person on account of

her participation in this action and that such participation shall have no adverse effect upon any person's promotional opportunities, salary treatment, or personnel record.

VII. Form and Term of Agreement

- A. This agreement shall be embodied in full in (or appended as an exhibit to) a consent decree to be entered in the United States District Court for the Southern District of New York, and shall be considered an order of said court and be enforceable therein as such. Said decree shall provide for the compromise and settlement, in the manner set forth in this agreement, of the claims made by plaintiffs, Susan Wagner Leisner, Karen Malinowski, Linda Gedeon, Cecilia Hurowitz, Myroslawa Wanio, Victoria Principe, Margaret Keck Milkman and Jane Booth, and the dismissal without prejudice of the claims of all other members of the plaintiff class; provided, however, that the f mpany may require, as a condition to its implementation of the salary increases provided for in Section V, the promotions provided for in Section III-A, and/or the training provided for Section III-C, the execution, by each individual receiving such salary adjustment, promotion or training, of a release releasing the Company from any and all liability based upon any claim arising or alleged conduct occurring prior to the date this agreement took effect. The court shall retain jurisdiction of this action for entry of such orders as are necessary to effectuate the provisions of said decree. Any member of the class (as certified by the Court's order of March 2, 1973) or her representative shall have standing to enforce the terms of said decree.
- B. Unless stayed by the Court (as provided below), this agreement shall take effect on the 45th day following

entry of the consent decree referred to in the preceding paragraph and shall terminate on December 31, 1976. Notwithstanding the foregoing, the provisions of Section IV-E shall, if necessary, continue in effect beyond December 31, 1976 in accordance with the provisions of Section IV-F. If prior to the effective date, a notice of appeal, motion for intervention, application for a stay, or other similar application (or an application to extend the time for filing such notice or making such motion or application) has been filed or served by a person or persons not a party to this agreement, the Court may, upon a showing of necessity, stay the effective date of this agreement and/or enter such other orders as will best effectuate the terms and purposes of this agreement.

VIII. Effect of "Philadelphia Decree"

- A. This agreement is intended to supplement and not conflict with a decree entered on January 18, 1973, in an action entitled Equal Employment Opportunity Commission v. American Telephone and Telegraph Company, et al. (No. 73-149), in the United States District Court for the Eastern District of Pennsylvania (the "Philadelphia Decree") and an order entered by the New York State Division of Human Rights, embodying a Conciliation Agreement, dated April 24, 1973, in a proceeding entitled Lefkowitz v. New York Telephone Company (the "New York Order").
- B. No person who participates or elects to participate in any benefits pursuant to the Philadelphia Decree or the New York Order shall, by reason of such participation or election, be deemed to have waived any rights under this agreement. Thus, receipt of a \$100 per month salary increase by employees who are assessed as satisfactory under the manage-

ment assessment procedures provided for in the Philadelphia Decree shall not reduce the payments or salary increases provided for in this agreement.

C. In the event that the court retaining jurisdiction of this matter shall determine that there is any conflict or inconsistency between the Philadelphia Decrea or the New York Order and this agreement, the court shall resolve the conflict or inconsistency so as not to derogate from the effect of the Philadelphia Decree or the New York Order.

IX. Reporting

- A. Sixty days after the effective date of this agreement, the Company shall report to plaintiffs' attorneys the following data or descriptive information:
- 1. The current job title, salary grade level and annual salary of each of the named plaintiffs still employed by the Company or other Bell System companies; and
- 2. The names of all women hired, between

 January 1, 1968 and the date of execution of this agreement,

 directly into Grade 5 Traffic Management positions and

 still employed in Grade 5 Traffic Management positions as

 of the date of execution of this agreement listing as to

 each:
 - a. Current job title;
 - b. Salary grade level;
 - c. Annual salary immediately prior to the effective date of this agreement; and
 - d. Annual salary immediately following the effective date of this agreement and implementation of the promotional increase provided for in Section III-A.

- B. Ninety days after the effective date of this agreement, the Company shall report to plaintiffs' attorneys the names of all women hired prior to the date of execution of this agreement directly into Grade 5 or 7 Traffic Management positions and employed in Grade 5 or Grade 7 positions in Operator and Business Services (with the exception of those women who have previously worked in Dial Services or who, since April, 1973, have been canvassed for their interest in or offered the opportunity to transfer to Dial Services), listing as to each:
 - 1. Job title and salary grade level immediately prior to the effective date of this agreement (and, if different, job title and salary grade level following the effective date of this agreement);
 - Net credited service date;
 - 3. Territory in which employed;
 - 4. Whether interest expressed in transfer to Dial Services, and, if so, whether found qualified for such transfer.
- C. Sixty days after the date assigned for completion of the individualized training programs to be given women promoted, pursuant to Section III-A, from Grade 5 to Grade 7, the Company shall report to plaintiffs' attorneys, separately and with respect to each such woman, her job title and the titles and duration of the formal training courses attended by her since the effective date of this agreement.
- D. Sixty days after December 31, 1973, and sixty days after each of the calendar years 1974, 1975 and 1976,

the Company shall report to plaintiffs' attorneys the following data or descriptive information:

- 1. The current job title, salary grade level and annual salary of each of the named plaintiffs still employed by the Company or other Bell System companies;
- 2. The titles and duration of any formal training courses attended by each of the named plaintiffs still employed by the Company or other Bell System companies and by women transferred to Dial Services pursuant to Section III-B (with such information arranged separately as to each such woman) since the effective date of this agreement or the last report, whichever is more current;
- 3. A description of any complaint of harassment, coming to the attention of one of the Company's Human Resources Coordinators, from any woman in Traffic Management in connection with this settlement.
- 4. Any modification or proceeding seeking modification either in duration or affirmative action requirement of either the Philadelphia Decree or the New York Order which would affect, directly or indirectly, the Company's responsibilities under this agreement occurring since the effective date or last report, whichever is more current.
- ... 5. The number of Grade 7 Dial Services vacancies filled in each Territory of the

Company, and the names and (new) job titles of women transferred pursuant to Section III-B to Dial Services in each such Territory, during the period commencing 20 days after the effective date of this agreement or since the last report, whichever is more current (it being understood, notwithstanding the provisions of Section IX-D, that the first report due under this Section IX-D-5 shall be due sixty days after December 31, 1974).

- 6. With respect to the fill-rate goals for men established for the Traffic management categories specified in Section IV-G:
- a. The number of vacancies filled in each such category since January 1, 1973 or the period covered by the most recent annual report, whichever is more current; and
- b. The number and names of the men . selecte? to fill such vacancies in each such category.
- E. Sixty days after December 31, 1973, sixty days after each of the calendar years 1974, 1975 and 1976, and, if necessary, sixty days after the termination date as specified in Section IV-F, the Company shall report to plaintiffs' attorneys the following information with respect to the fill-rate goals for women established for the Traffic management categories specified in Section IV-E:

- 1. The number of vacancies filled in each such category since January 1, 1973 or the period covered by the most recent annual report, whichever is more current, and (except where the vacancy was created by the addition of a position) the name of the employee whose transfer, promotion, or loss created the vacancy; and
- 2. The number and names of the women selected to fill such vacancies in each such category together with the name of the employee replaced by each such woman.
- F. In the event that the reports submitted pursuant to Section IX-A through IX-E show a failure on the part of the Company to meet any of the obligations imposed by this agreement within the appropriate time period or a negative deviation of 2 percent or more from a goal established for a specified Traffic Management category and time period, the Company shall, within 20 days following its receipt of a request by plaintiffs' attorneys (which request shall specify the obligation(s) the Company has failed to meet or the negative deviation which has occurred), report to plaintiffs' attorneys the following data and/or descriptive information:
 - The reason(s) for the Company's failure to meet the obligation(s) or for the negative deviation specified in the request; and

2. A description of the Company's efforts to meet the obligation(s) or goals specified in the request; and

- 3. In the case of a negative deviation of 2 percent or more from a goal established for a specified category and time period:
 - a. The job title, salary grade level, and latest management appraisal or evaluation form or forms (such as the P-1, P-2, P-3 or P-4 form or forms) for each person selected to fill a vacancy in the Traffic management category or categories and the time period in which such deviation occurred (with such information arranged by job title);
 - b. The job title, salary grade level, and latest management appraisal or evaluation forms for each female employee on the appropriate ready-now list for the management level or levels which constitute or include the Traffic management category or categories in which such deviation occurred (with such information arranged by job title);
 - c. The number of vacancies projected during the next fill-rate goal period(s) as specified in Section IV-E in the management category or categories in which such deviation occurred; and

- d. The criteria utilized in filling each vacancy in the management category or categories in which such deviation occurred, together with a description of the manner in which such criteria relate to the performance of each job in which vacancies were filled.
- G. It is understood and agreed that all reports, data, and descriptive information which shall or may be furnished by the Company to plaintiffs' attorneys pursuant to this agreement constitute confidential information, and accordingly, shall not be disclosed by plaintiffs' attorneys to any other person, other than to the Court retaining jurisdiction of this action, and, to the extent necessary, to no more than two associates, in connection with litigation arising under this agreement or in preparation therefor.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective representatives on the day and year first above written.

> SUSAN WAGNER LEISNER, KAREN MALINOWSKI, LINDA GEDEON, CECILIA HUROWITZ, MYROSLAWA WANIO, VICTORIA PRINCIPE, MARGARET KECK MILKMAN, and JANE BOOTH

Harriet Rabb Attorney

NEW YORK TELEPHONE COMPANY

Morton M.

Attorney

Howard L. Ganz

Attorney

Of Counsel Proskauer Rose Goetz & Mendelsohn

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UNITED STATES DISTRICT COURT SECOND DISTRICT OF NEW YORK

SUSAN WAGNER LEISNER, KAREN MALINOWSKI, LINDA GEDEON, CECILIA HUROWITZ, MYROSLAWA WANIO, VICTORIA PRINCIPE, MARGARET KECK MILKMAN and JANE BOOTH, individually and on behalf of all other persons similarly situated,

72 Civ. 2127

Plaintiffs,

-against-

NEW YORK TELEPHONE COMPANY,

Defendant.

State of New York) County of New York) ss:

AFFIDAVIT

HARRIET RABB being duly sworn deposes and says:

- I am one of counsel for plaintiffs in the abovecaptioned matter.
- 2. On or about December 2, 1973, defendant delivered to me as counsel the lump sum provided in the Court's order of September, 1973. I put that money into a special and separate bank account pending distribution to my clients of their shares of the total amount. That money is still in that account.
- 3. After consulting with one of the plaintiffs with whom I regularly consulted throughout this litigation, I drafted the proposal attached hereto as Exhibit A and dated December 17, 1973. All but one of the plaintiffs approved the settlement in writing (Copies of the consents are in my offices.)

- 4. One plaintiff, Cecilia Hurowitz, expressed dissatisfaction with the distribution. The fore, I distributed a second proposal to all of the plaintiffs, Exhibit B, dated January 10, 1974 and Hurowitz's letter, Exhibit C, dated December 19, 1973. All of the plaintiffs wrote back suggesting the following amounts for Plaintiff Hurowitz: \$300 (1 plaintiff), \$500 (4 plaintiffs), \$755 (1 plaintiff), and \$800 (1 plaintiff). Copies of these documents, too, are in my office.
- 5. I, as counsel, have no wish to mediate this matter but alternatically cannot distribute the money without either agreement or Court approval. Ms. Hurowitz has been voted a share less than the others because A) she was employed by the Company for only one year; B) She did not participate in any stage of the proceeding post filing of EEOC charges; and C) She voluntarily left the employ of the defendant on or about one week before the federal court action was commenced.
- 6. Other plaintiffs were voted allocations based upon the risks to their employment hazarded by litigation, their participation in the preparation of extensive discovery and other pre-trial preparation of materials, the time they spent in consultation with counsel in preparing the action, the difficulties they suffered at work due to and pending the litigation, their formal appearance at trial and their continued employ with attendant visibility and risk with the defendant and/or another AT&T operating company.
- 7. Counsel has used the means believed to be best calculated to fairly canvass all the plaintiffs for their views. All but one being in agreement, the Court is asked to settle the matter.

8. Plaintiff Hurowitz has contacted counsel who now requests that she be allotted \$1,500. Her counsel is Mr. Kenneth Fields of Wasserman, Chenitz, Geffner and Green, 41 East 42nd Street, New York, New York 10017 (Tel. M07-0505).

Harriet Rabb

Sworn to before me this 5th day of February, 1974.

HOWARD J. RUEIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31 522524
Qualified in New York County
Term Expires March 30, 1974

Notary Public

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK -----X SUSAN WAGNER LEISNER, KAREN MALINOWSKI, LINDA GEDEON, CECILIA HUROWITZ, MYROSLAWA 72 Civ. 2127 WANIO, VICTORIA PRINCIPE, MARGARET KECK MILKMAN and JANE BOOTH, individually and on behalf of all other persons similarly AFFIDAVIT situated, Plaintiffs. - against -NEW YORK TELEPHONE COMPANY, Defendant. ----X STATE OF NEW YORK, COUNTY OF NEW YORK (SS: CECILIA HUROWITZ, being duly sworn, deposes and says: Your deponent is one of the named plaintiffs in the above entitled action.

- 2. On or about May, 1972, when your deponent left the employ of New York Telephone Company to go to upstate New York with her husband, who had a business opportunity there, she indicated to Harriet Rabb, Esq., plaintiffs' counsel in the instant action, that she would remain available to help, in any way Ms. Rabb deemed necessary, to bring the within action to a successful conclusion.
- 3. That during the course of the litigation of the instant action, your deponent remained available to testify or aid attorney Rabb in any way that Ms. Rabb deemed necessary.
- 4. That your deponent answered all correspondence sent to her by Ms. Rabb.

- 5. That Ms. Rabb never called upon your deponent to testify in the within action.
- 6. That when your deponent consented to the agreement of settlement in the within action, she did so under the assumption that any subsequent distribution of the settlement fund would be equitable.
- 7. That when your deponent informed Ms. Rabb that she was not satisfied with the proposed distribution in Ms. Rabb's letter of December 17, 1973, Ms. Rabb informed your deponent that the proposal was decided upon after consultation with some of the other named plaintiffs.
- 8. That your deponent never told Ms. Rabb that she would accept \$1,000 in full settlement of her claim, but rather indicated to Ms. Rabb that your deponent felt she should receive at least that sum.
- 9. That upon information and belief, plaintiffs LEISNER and BOOTH are no longer employed by the New York Telephone

 Company, and have not been so employed for several months now.

CECILIA HUROWITZ

Sworn to before me this

26th day of February, 1974

KENNETH R. FIELDS Notary Public, State of New York No. 31-9921155

Qualified in New York County., Commission Expires Merch 30, 197. UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

SUSAN WAGNER LEISNER, KAREN MALINOWSKI, : LINDA GEDEON, CECILIA HUROWITZ, MYROSLAWA : WANIO, VICTORIA PRINCIPE, MARGARET KECK : MILKMAN and JANE BOOTH, individually and on behalf of all other persons similarly situated, :

Plaintiffs,

-against-

NEW YORK TELEPHONE COMPANY,

Desendant.

72 Civ. 2127

:

MEMORANDUM

FOR PLAINTIFF HUROWITZ

TABLE OF CONTENTS

| | Page |
|---|---------|
| Preliminary Statement | 1 |
| Point I Attorney Rabb has arbitrarily allocated an excessive sum for legal fees | 3 |
| Point II There is no equitable basis for the proposed distribution | 5 |
| Conclusion | 13 |
| | |
| | |
| | |
| LIST OF EXHIBITS | |
| Attorney Rabb's letter of | Exhibit |
| December 17, 1973 | A |
| Attorney Rabb's letter of January 10, 1974 | в |
| ttorney Rabb's letter of February 5, 1974 | C |
| ffidavit of Attorney Rabb | D |
| roposed Order of Attorney Rabb | E |
| ffidavit of Plaintiff Hurowitz | . F |

Preliminary Statement

This memorandum is submitted on behalf of Cecilia
Hurowitz, one of the named plaintiffs in the aboveentitled action. Mrs. Hurowitz was one of eight women
employed by the New York Telephone Company in management
level positions who brought this class action pursuant
to Title VII of the Civil Rights Act of 1964, as amended,
42 U.S.C. 882000e et seq. for injunctive relief and
damages. The plaintiffs alleged that the defendant
Telephone Company discriminated against women employed
in management level positions in its traffic departmentathroughout the state in violation of the statute.

The plaintiffs retained Harriet Rabb, Esq. to prosecute the action. The litigation was concluded with an Agreement of Settlement, dated August 3, 1973, which agreement was adopted as the judgment of the Court. 6 EPD paragraph 8871. One of the terms of the Settlement provided in sub-paragraph II(A):

"Within 10 days following the date this agreement takes effect, the Company shall pay to plaintiffs and their attorneys the sum of \$52,100 in the form of a check payable to the order of Harriet Rabb, as attorney."

It is the disposition of this Settlement Fund that is the heart of the instant dispute. In her letter of December 17, 1973 (Exhibit A), Ms. Rabb allocated the sum of \$300 to Mrs. Hurowitz. Mrs. Hurowitz indicated

that she felt this sum was too low. Ms. Rabb subsequently mailed the letter of January 10, 1974 (Exhibit B) to the plaintiffs. Finally, Ms. Rabb sent a letter, dated February 5, 1974 (Exhibit C) to the Court, with an accompanying affidavit (Exhibit D) and proposed order (Exhibit E). Under the terms of the correspondence of February 5, 1974, Mrs. Hurowitz was to receive the sum of \$600.

Plaintiff Hurowitz contends that a) Ms. Rabb has arbitrarily allocated an excessive sum for legal fees; b) there is no equitable basis for the proposed distribution.

POINT I

ATTORNEY RABB HAS ARBITRARILY ALLOCATED AN EXCESSIVE SUM FOR LEGAL FRES

In the instant case, counsel is asking for the sum of \$36,300.00 for legal fees. Under the terms of the Agreement of Settlement, the sum of \$52,100.00 was awarded to the named plaintiffs and their attorneys. Accordingly, counsel is asking for a fee equal to 69.6 per cent of the total monetary recovery. This fee is clearly excessive when compared to counsel fees awarded in similar actions.

In Pauline Danner v. Phillips Petroleum Company, 3 EPD paragraph 8336, United States District Court, Western District of Texas, No. 69-CA-102, May 18, 1970. an action brought under 42 U.S.C. Sec. 2000e for unlawful discrimination against a female employee on account of her sex, the successful litigant was awarded damages in the sum of \$16,875.00 plus reasonable attorney's fees in the amount of \$2,500.00. In addition, the Court enjoined the defendant from discriminating against the plaintiff or any other female, because of her sex, in violation of Title VII of the Civil Rights Act of 1964.

In Shirley Lea et al. v. Cone Mills Corporation, 5 EPD paragraph 7975, United States Court of Appeals, Fourth Circuit, No. 71-1852, September 11, 1972, the United States Court of Appeals found that a Federal

District Court did not exceed its discretion in awarding attorney's fees totaling \$10,000.00 to 12 lawyers who were successful in obtaining injunctive relief against discriminatory employment practices on behalf of plaintiffs in a Title VII case. In that case, the award of attorney's fees was challenged as being too law.

In another action brought under the Civil Rights Act of 1964, Juanita Vogel v. Trans World Airlines, 5 EPD paragraph 8432, United States District Court, Western District of Missouri, Western Division, No. 17706-3, May 10,1971, the Court held that \$1500.00 was a reasonable award of attorney's fees for the preparation and trial of a suit brought by a woman airline mechanic to remedy an airlines discriminatory policy of setting limits on overtime hours for women, but not for men.

The case of Lindy Bros. Builders, Inc. of Philadelphia, et al. v. American Radiator & Standard Sanitary Corp., et al., 341 F. Supp. 1077, United States District Court, Eastern District of Pennsylvania, 1972, involved a multidistrict plumbing fixture anti-trust litigation brought as a class action under Rule 23 of the Federal Rules of Civil Procedure. The Court found authority for fixing attorneys' fees claimed by those responsible for the creation of a settlement fund under the general equitable powers of the Court. In deciding that one-third of the settlement fund would be an

excessive award of counsel fees, the Court said (at p.1089):

"In no case that has been brought to the attention of this Court have class action fees been awarded in the amount of 33 1/3% of a settlement fund or of any substantial portion of such fund. On the contrary, in comparable situations, class action fees awarded by the Court have not exceeded 25% and in many instances have been less than that figure."

In <u>Courtesy Chevrolet</u>, <u>Inc. v. Tennessee Walking Horse</u>

<u>Breeders and Exhibitors' Ass'n.</u>, 393 F. 2d 75, the Court of Appeals in the 9th Circuit found \$10,000 to be a reasonable attorneys' fee. In that complicated antitrust case, plaintiffs attorneys expended a total of 2,289 hours.

POINT II

THERE IS NO EQUITABLE BASIS FOR THE PROPOSED DISTRIBUTION

In her letter to the named plaintiffs of December 17, 1973 (Exhibit A), Attorney Harriet Rabb indicated that the distribution that she originally proposed was arrived at "on the basis of risk, burden and visibility of each named plaintiff." She did not elaborate on any of these vague criteria. Neither the Court nor the named plaintiffs were presented with the specific details of her analysis.

In her affidavit of February 5, 1974 (Exhibit D),
Ms. Rabb indicated that the distribution proposed in her
letter of December 17, 1973 (under which Mrs. Hurowitz
was to receive \$300) was drafted after she consulted with
one of the plaintiffs. She did not reveal the name of

this plaintiff, nor did she indicate the nature this consultation. When counsel for Mrs. Hurowitz telephoned Ms. Rabb on January 28, 1974, she said that the proposed distribution of December 17, 1973 was arrived at after discussion with "most" of the named plaintiffs. She indicated to Mrs. Hurowitz that the proposal was drafted after she discussed it with "some" of the plaintiffs (Exhibit F). Notwithstanding the apparent discrepancy above, it would seem that inasmuch as Ms. Rabb was representing all of the named plaintiffs, it was incumbent upon her to either discuss the proposal with all the named plaintiffs, or apply to the Court for guidance in the distribution. Her application to the Court was not timely, as it was made only after she was contacted by counsel and pressured with the possibility of litigation.

In attempting to show why Mrs. Hurowitz' proposed share of the proceeds was so much smaller than the other plaintiffs, Ms. Rabb cites the fact that Mrs. Hurowitz was with the Company for only one year. She does not show, however, how long any of the other plaintiffs were employed by the Company. Nor does she show that at least three of the other plaintiffs are no longer with the Company.

Further in her affidavit Ms. Rabb indicates that .
Mrs. Hurowitz "did not participate in any stage of the proceeding post filing of EEOC charges." What Ms. Rabb does not indicate is that in spite of the fact that Mrs.

Hurowitz left the New York City area, she specifically indicated to Ms. Rabb that she was still available to help bring the instant action to a successful conclusion in any way that Ms. Rabb deemed necessary. (Exhibit F).

In her proposed distribution of December 17, 1973, Ms. Rabb allocated the sum of \$3,000.00 each to plaintiffs Leisner and Booth. Both of these plaintiffs were hired at Salary Grade 7, while Mrs. Hurowitz and the other named plaintiffs were hired at Salary Grade 5. Accordingly, Mrs. Hurowitz and the other named plaintiffs suffered greater discrimination, in terms of lower pay, than the two plaintiffs who were allocated the largest shares of the Settlement Fund by Ms. Rabb. Furthermore, upon information and belief, neither Ms. Leisner nor Ms. Booth are now employed by the Company.

In the complaint commencing the instant action, counsel asserted that women entering the Company were being paid at Salary Grade 5, while men with the same qualifications, were hired at Salary Grade 10 and above. The maximum salary at Level 5. (as of December, 1971), was \$11,400.00. At the same time, the maximum salary at Level 10 was \$16,800.00. Leisner et al. v. New York Telephone Company, 5 EPD paragraph 8498, at p. 7377, United States District Court, Southern District of New York, No. 72 Civ. 2127, March 1, 1973. Accordingly, Mrs. Hurowitz (and the other named plaintiffs who entered at Level 5), received \$5,400.00 less pay than equally

qualified male employees of the Company. In paragraph VIII(i) of the Complaint, the relief sought includes, "Requiring Defendant to award the named Plaintiffs back pay equal to the difference between the salary paid to men with equal qualifications hired at the same time as Plaintiffs and the salary received by Plaintiffs since the beginning of their employment with the Company." When viewed against this aspect of relief sought, the \$300 originally allocated to Mrs. Hurowitz bears no relationship to the damages she suffered, which in view of the foregoing should have been at least \$5,400.00 for back pay alone.

Under the terms of the Agreement of Settlement, dated August 3, 1973, paragraph V(A) provides:

"The Company will, on the first day of the month following the effective date of this agreement, increase the annual salary of each woman employed in Traffic Management, who was hired directly into a Traffic Management position at Grade 5 or above from January 1, 1968 through December 31, 1972, by the amount set forth next to the year of her hire:

1968 -- \$1,100 1969 -- \$1,000 1970 -- \$ 900 1971 -- \$ 450 1972 -- \$ 450."

When viewed in conjunction with this provision in the Settlement, the inequity of Mrs. Hurowitz' original allocation of \$300 is even more apparent. In effect, she was originally allocated an award less in amount than the sum to be realized by the unnamed class plaintiffs. By originally tendering such a paltry sum to Mrs. Hurowitz, Ms. Rabb would have us believe that Mrs. Hurowitz' exposure

in this action was minimal. Ms. Rabb apparently did not consider the harassment Mrs. Hurowitz was subjected to post filing her EEOC complaint. Nor did Ms. Rabb take into account the possibility that Mrs. Hurowitz' future employment and/or advancement with the Company may have been jeopardized, or the effect that her participation in the instant case may have with regard to references should Mrs. Hurowitz seek employment with another company.

In signing the complaint initiating the instant action, while still in the employ of the Company, Mrs. Hurowitz exposed herself to the same risks as the other named plaintiffs. When she left the Company, Mrs. Hurowitz could have withdrawn her name from the complaint and thereby have had a "clean record" with the Company. However, because of her commitment to the underlying principles of the instant action, she chose to remain a participant therein.

Had Mrs. Hurowitz so desired, she could have commenced an action against the Company, alleging sex discrimination, as an individual plaintiff. Had she done so, it is unlikely that she would have settled such an action for \$300, particularly in view of the fact that the back pay she would have been entitled to amounted to approximately \$5,400.00, and under 42 U.S.C. Sec. 2000e-5(k) she would also have been entitled to recover reasonable attormey's fees. She participated in the instant action under the assumption that any

settlement entered herein would bear some relationship to the relief sought. Accordingly, when she consented to the Agreement of Settlement (prior to Ms. Rabb's proposed allocations), she did so under the good faith assumption that the subsequent distribution of the Settlement Fund would be equitable. (Exhibit F).

In her letter to the named plaintiffs of January 10, 1974 (Exhibit B), Ms. Rabb indicated that Mrs. Hurowitz was not satisfied with the proposed distribution of the Settlement Pund. She wrote that Mrs. Hurowitz asked to be given \$1,000. In Mrs. Hurowitz' affidavit (Exhibit F) it appears that Ms. Rabb misrepresented Mrs. Hurowitz' position. In her affidavit, Mrs. Hurowitz indicates that she informed Ms. Rabb that she felt she should receive at least \$1,000.

Further in the January 10th letter, Ms. Rabb wrote:

"In order for me to get your money to you with dispatch, I will, upon receipt of your answers, average the amount you believe Cecilia (Mrs. Murowitz) is due and deduct an equal 1/7 of that amount from each allocation heretofore agreed on. For example, if you all believe \$1,000.00 is correct, I'll deduct \$100 from the previous budget for each of you. If some say \$1,000, some \$300, some \$500, etc., I'll add the amounts and divide by 8 (sic?) and deduct 1/7 of the amount over \$300 from each of you."

Ms. Rabb apparently felt that the \$36,300.00 she arbitrarily awarded for legal fees was sacrosanct. In effect, she was informing the seven other named plaintiffs that the only way they might remedy the initial inequitable

proposed distribution was by paying the difference out of their collective pockets. By so doing, she was misleading them to believe that the 69.6% of the fund allocated by her for legal fees was non-negotiable, and apparently not open to discussion. The method proposed in the January 10th letter seems to be at odds with Ms.
Rabb's statement (Exhibit D) that "(c)ounsel has used the means best calculated to fairly canvass all plaintiffs for their views."

Although Ms. Rabb apparently sent copies of the Agreement of Settlement to the named plaintiffs, this was the last time that any of them seemed to be apprised of the fact that the Settlement Fund consisted of \$52,100.00. In her letter of December 17, 1973 (Exhibit A), after proposing \$3,000.00 for counsel services to Richard Leisner, Esq., Ms. Rabb wrote, "The remainder of the funds will be added to a Law School bank account which is used solely for the purpose of funding other litigation efforts by our seminar. No other individual will get any of the funds." No mention is made of the size of the fund to be donated to the Law School. It is doubtful that any of the plaintillfs were informed that the lion's share of any subsequent recovery was to be donated to Ms. Rabb's select charity when they retained her services. Accordingly, they should not now be coerced into donating to Ms. Rabb's charity what should equitably compensate them for damages suffered. Ms. Rabb's primary obligation should be to her clients, and not to her Law School.

In her letter of January 10,1974 (Exhibit B), Ms.

Rabb mentions neither the amount of the Settlement Fund,

nor the amount of legal fees involved. In her letter to

the Court of February 5, 1974, Ms. Rabb again fails to

recite the amount she is allocating to legal fees.

(Exhibit C). Finally, in the proposed Order of distribution, (Exhibit E) no mention is made of counsel feest

In her Affidavit of February 5, 1974, Ms. Rabb wrote, "Plaintiff Hurowitz has contacted counsel who now requests that she be allotted \$1500." This is an inaccurate statement. The only time counsel for Mrs. Murowitz discussed possible settlement of the instant action with Ms. Rabb was on January 28, 1974. At that time, Ms. Rabb proposed establishing a \$1000 escrow account to cover Mrs. Murowitz' possible share of the Settlement, so that the remainder of the Fund could be distributed. Under the terms of that offer, Mrs. Hurowitz was not offered the sum outright and Ms. Rabb. maintained that final settlement would have to be subject to approval of the other named plaintiffs. This "offer" was rejected as being inadequate.

CONCLUSION

In view of the fact that Attorney Rabb has arbitrarily allocated an excessive amount of the Settlement Fund for attorneys' fees, and in view of the fact that the amount allocated to each of the named plaintiffs has no equitable basis and is inadequate to compensate them for damages suffered, counsel for Mrs. Hurowitz hereby proposes that the Court award Ms. Rabb what it deems to be reasonable counsel fees, and thereafter divide the remainder into eight equal shares of at least \$5,400, representing the back pay sued for, and award that sum to each of the named plaintiffs.

Counsel for Mrs. Hurowitz further requests the sum of \$1500, for counsel fees, for his time and effort in making this application, and for calling to the Court's attention the aforementioned inequities.

Respectfully Submitted.

Wasserman, Chinitz, Geffner & Green By Kenneth R. Fields; Esq. Attorneys for Plaintiff Hurowitz. Exhibit A

EMPLOYMENT RIGHTS PROJECT

435 West 116th Street New York, New York 10027 (212) 280-4291

George Cooper

Harriet Rabb

December 17, 1973

Ms. Celia Hurowitz

Box 14

Ancrandale, New York 12503

Dear Celia:

On Monday, December 3, the attorneys delivered to us the check which the New York Telephone Company agreed would be forthcoming upon settlement of your case. (See enclosed Order, p. 5692). We expect to receive our first set of reports about current hiring, promotion, etc. after the first of the year.

I am really pleased to be able to distribute money to all of you and hope that the following allocation, arrived at on the basis of risk, burden and visibility of each named plaintiff, meets with your satisfaction:

| Susan Leisner | \$3,000.00 |
|-------------------|------------|
| Jane Booth | \$3,000.00 |
| Victoria Principe | \$2,000.00 |
| Myrosha Wanio | \$2,000.00 |
| Linda Gedeon | \$2,000.00 |
| Karen Malinowski | \$2,000.00 |
| Mimi Milkman | \$1,500.00 |
| Calia Hurowitz | \$ 300 00 |

For counsel services:

Richard Leisner \$3,000.00

The remainder of the funds will be added to a Law School bank account which is used solely for the purpose of funding other litigation efforts by our seminar. No other individual will get any of the funds.

If this budget meets with your approval, please initial your copy of this letter and return it in the enclosed envelope. We also hope and expect you will be satisfied with the enclosed settlement opinion.

- 2 -

I look forward to hearing from each of you and, as soon as I do, if everyone approves, I'll distribute your money as above-described. George and I have enjoyed representing you and wish you all much professional success.

Best regards,

Harriet

Harriet Rabb George Cooper

Enclosures

Exhibit B

EMPLOYMENT RIGHTS PROJECT 435 West 116th Street New York, New York 10027 (212) 280-4291

George Cooper

Harriet Rabb

January 10, 1974

Dear Friend:

I have received responses from all of you regarding the distribution of settlement funds in the Telephone case. There was only one dissent, Cecilia Hurowitz's, to the proposal, and Cecilia's letter is enclosed. I have spoken with her and she has asked that she be given \$1,000. In order to make that distribution the following adjustment would be required:

| Susan Leisner Jane Booth Victoria Principe Myrosha Wanio Linda Gedeon Karen Malinowski Mimi Milkman Cecilia Hurowitz | \$3,000.00 3,000.00 2,000.00 2,000.00 2,000.00 1,500.00 300.00 | \$2,900.00 2,900.00 1,900.00 1,900.00 1,900.00 1,400.00 |
|--|--|--|
|--|--|--|

As you know from my first letter, the previous proposal was formulated on the risk each of you took of losing your job and/or future prospects, the continuing risks you face in current Telephone Company (N.Y. or other) employ, your in-put in the case process, the burdens imposed on you in information gathering, your "visibility" in the company, etc. Because Cecilia worked for only one year and then left before court litigation got going, I had suggested \$300.00 which was apparently acceptable to all of you. Obviously if you would prefer her share to be \$1,000.00 I would be happy to

In order for me to get your money to you with dispatch, I will, upon receipt of your answers, average the amount you believe Cecilia is due and deduct an equal 1/7 of that amount from each allocation heretofore agreed on. For example, if you all believe \$1,000.00 is correct, I'll deduct

January 10, 1974 Page 2. \$100 from the previous budget for each of you. If some say \$1,000, some \$300, some \$500, etc., I'll add the amounts and divide by 8 and deduct 1/7 of the amount over \$300 from each of you. If you have any questions, please call me. To those of you who sent kind words, George and I are truly grateful. Letters like those are the best reward for lawyering. Sincerely, Harriet Rabb Cecelia should receive \$300 \$1,000 Signature

A-60

Exhibit C

February 5, 1974

Honorable Constance Baker Motley United States District Court United States Courthouse Foley Square New York, New York 10007

> Re: Leisner et al. v. New York Telephone, 72 Civ. 2127

Dear Judge Motley:

This letter is sent to you as a request for instructions. Your order in the above-referenced matter is reported at 6 EPD 8871 (1973). As you will note, paragraph IRA provides for a lump sum payment to me for counsel fees for my office and co-counsel, and for special monies for each named plaintiff in the action. I propose to distribute the funds to the plaintiffs as follows:

| Susan Leisner | \$2957 |
|-------------------|--------|
| Jane Booth | \$2937 |
| Victoria Principe | \$1957 |
| Myrosha Wanio | \$1957 |
| Linda Gedeon | \$1957 |
| Karen Malinowski | \$1957 |
| Mimi Milkman * | \$1457 |
| Cecilia Hurowitz | \$ 600 |

The details of the calculation are set forth in the affidavit accompanying this letter. If the proposal meets your approval, please do notify me to that effect so that I may distribute my clients' funds. I am grateful for your assistance in this matter.

Sincerely, Harriet Bulb

Harriet Rabb

cc: Kenneth Fields, Esq.

UNITED STATES DISTRICT COURT
SECOND DISTRICT OF NEW YORK

SUSAN WAGNER LEISNER, KAREN NALINOWSKI,
LINDA GEDEON, CEGLILA ELGANTE, MINOSLAWA
WANIO, VICTORIA PRINCIPE, MARGARET KECK
MILKMAN and JANE BOOFH, individually and
on behalf of all other persons similarly
situated,

Plaintiffs,

-againstNEW YORK TELEPHONE COMPANY,
Defendant.

State of New York)
County of New York) ss:

AFFIDAVIT

HARRIET RABB being duly sworn deposes and says:

- 1. I am one of counsel for plaintiffs in the above-captioned matter.
- 2. On or about December 2, 1973, defendant delivered to me as counsel the lump sum provided in the Court's order of September, 1973. I put that money into a special and separate bank account pending distribution to my clients of their shares of the total amount. That money is still in that account.
- 3. After consulting with one of the plaintiffs with whom I regularly consulted throughout this litigation, I drafted the proposal attached hereto as Exhibit A and dated December 17, 1973. All but one of the plaintiffs approved the settlement in writing (Copies of the consents are in my offices.)

- 4. One plaintiff, Cecilia Hurowitz, expressed dissatisfaction with the distribution. Therefore, I distributed a second proposal to all of the plaintiffs, Exhibit B, dated January 10, 1974 and Hurowitz's letter, Exhibit C, dated December 19, 1973. All of the plaintiffs wrote back suggesting the following amounts for Plaintiff Hurowitz: \$300 (1 plaintiff), \$500 (4 plaintiffs), \$755 (1 plaintiff), and \$800 (1 plaintiff). Copies of these documents, too, are in my office.
- 5. I, as counsel, have no wish to mediate this matter but alternatively cannot distribute the money without either agreement or Court approval. Ms. Hurowitz has been voted a share less than the others because A) she was employed by the Company for only one year; B) She did not participate in any stage of the proceeding post filing of EEOC charges; and C) She voluntarily left the employ of the defendant on or about one week before the federal court action was commenced.
- 6. Other plaintiffs were voted allocations based upon the risks to their employment hazarded by litigation, their participation in the preparation of extensive discovery and other pre-trial preparation of materials, the time they spent in consultation with counsel in preparing the action, the difficulties they suffered at work due to and pending the litigation, their formal appearance at trial and their continued employ with attendant visibility and risk with the defendant and/or another AT&T operating company.
- 7. Counsel has used the means believed to be best calculated to fairly canvass all the plaintiffs for their views. All but one being in agreement, the Court is asked to settle the matter.

8. Plaintiff Hurowitz has contacted counsel who now requests that she be allotted \$1,500. Her counsel is Mr. Kenneth Fields of Wasserman, Chenitz, Geffner and Green, 41 East 42nd Street, New York, New York 10017 (Tel. MO7-0505).

Harriet Rabb

Sworn to before me this Sth day of February, 1974.

HOWARD J. RUBIN
ROTARY PUBLIC, STATE OF NEW YORK
No. 31-5522584
Qualified in New York County
Term Expires March 30, 1974

Notary Public

UNITED STATES DISTRICT COURT SECOND DISTRICT OF NEW YORK

SUSAN WAGNER LETSNER, KAREN MALINOWSKI, LINDA GEDEON, CECILIA HUROWITZ, MYROSLAWA WANIO, VICTORIA PRINCIPE, MARGARET KECK : MILKMAN and JANE BOOTH, individually and on behalf of all other persons similarly : situated,

72 Civ. 2127

Judge Motley

Plaintiffs,

-against-

NEW YORK TELEPHONE COMPANY,

Defendant.

ORDER

Upon the facts set forth in the affidavil of plaintiff's counsel describing the bases upon which the proposal for distribution of funds for the plaintiffs in this action rests, it is

Ordered, Adjudged and Decreed that the following distribution shall be made to the named plaintiffs in this action:

| Susan Leisner | \$2957 |
|-------------------|--------|
| Jane Booth | \$2957 |
| Victoria Principe | \$1957 |
| Myrosha Wanio | \$1957 |
| Linda Gedeon | \$1957 |
| Karen Malinowski | \$1957 |
| Mimi Milkman | \$1457 |
| Cecilia Hurowitz | \$ 600 |

So ordered:

U.S.D.J.

Dated:

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

SUSAN WAGNER LEISNER, KA EN MALINOWSKI, LINDA GEDEON CEGILIA HUROWITZ, MYRCSLA. WANIO, VICTORIA PRINCIPE, MARGARET KECK MILKMAN and JANE BOOTH, individually and on behalf of all other persons similarly situated,

2127

AFFID. VIT

Plaintiffs,

- against -

NEW YORK TELEPHONE COMPANY,

Defendant.

----X

STATE OF NEW YORK, COUNTY OF NEW YORK (SS:

CECILIA HUROWITZ , being duly sworn, deposes and says:

- 1. Your deponent is one of the named plaintiffs in the above entitled action.
- 2. On or about May, 1972, when your deponent left the employ of New York Telephone Company to go to upstate New York with her husband, who had a business opportunity there, she indicated to Harriet Rabb, Esq., plaintiffs, counsel in the instant action, that she would remain available to help, in any way Ms. Rabb deemed necessary, to bring the within action to a successful conclusion.
- 3. That during the course of the litigation of the instant action, your deponent remained available to testify or aid attorney Rabb in any way that Ms. Rabb deemed necessary.
- That your deponent answered all correspondence sent to her by Ms. Rabb.

- 5. That Ms. Rabb never called upon your deponent to testify in the within action.

 6. That when your deponent consented to the agreement of settlement in the within action, she did so under the assumption that any subsequent distribution of the sottlement fund would be equitable.

 7. That when your deponent informed Ms. Rabb that she was not satisfied with the proposed distribution in Ms. Rabb's letter of December 17, 1973, Ms. Rabb informed your deponent that the proposal was decided upon after consultation with some of the other named plaintiffs.
 - 8. That your deponent never told Ms. Rabb that she would accept \$1,000 in full settlement of her claim, but rather indicated to Ms. Rabb that your deponent felt she should receive at least that sum.
 - 9. That upon information and belief, plaintiffs LEISNER and BOOTH are no longer employed by the New York Telephone Company, and have not been so employed for several months now.

CECILIA HUROWITZ

Sworn to before me this

26th day of February, 1974.

KENNETH R. PIELDS
Actory Public, State of New York
No. 31-9621185
Qualitied in New York County,
Commission Expires Maron 30, 197.....

A-67

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

SUSAN WAGNER LEISNER, et al., :

Plaintiffs,

-against-

NEW YORK TELEPHONE COMPANY,

Defendant.

72 Civ. 2127

Judge Motley

REPLY MEMORANDUM ON DISTRIBUTION OF SETTLEMENT MONIES

I. The Allocation Of Special Funds Secured Through Settlement For Named Plaintiffs Was Equitably Measured.

Counsel has previously described the factors that were applied in allocating the special funds secured through settlement. See Rabb affidavit of February 5, 1974, paragraphs 5 and 6. Attached to the documents initially submitted to the Court on this question are copies of all the correspondence showing how the plaintiffs were involved in deciding in the actual allocation. See Murowitz Memo, Exhibits A and B attached thereto. Those matters need not be reiterated.

The real complaint of plaintiff Hurowitz and her counsel appears to be not that the special awards were arbitrary, but that a considerable sum "was to be donated to Ms. Rabb's select charity" [Columbia's Employment Rights Project], Hurowitz Memo, p. 11. Counsel for Ms. Hurowitz suggests that over 2/3 of the "total monetary recovery", Memo, p. 1, went to counsel fees. In fact, the counsel fees in this matter amounted to very substantially less than 69.9% (Hurowitz Memo, p. 3) of the monetary recovery. For example, the named plaintiffs who remained with a telephone operating company (New York Telephone or another) received, in addition to the special awards at issue, immediate promotions accompanied by at least a 6% pay increase or \$2,000 (whichever was greater). Furthermore, all management traffic women, including incumbent plaintiffs who performed well at the Assessment Center were to receive an additional \$1,200 salary increment. Additionally, as noted at p. 2 of Murowitz's Memo, a supplemental pay increase schedule was established for application to all of the incumbent women in traffic management and thousands of dollars were distributed to class members under that schedule. See Paragraph V(A) of the

consent decree.*

While there is little value to citing other cases in which fees awarded were larger or smaller than those here, it should be noted, for the record that in the Hicks v. Crown Zellerbach litigation (321 F.Supp. 1245 (1971)) counsel fees of \$100,000 were earned; in Griggs v. Duke Power Company, (401 U.S. 424 (1971)) fees amounted to \$80,000; and in Robinson v. Lorillard, (444 F.2d 791 (4th Cir. 1971)) counsel received \$150,000. It is curious, if not unseemly, that Ms. Hurowitz's lawyer suggests that counsel who managed this case from complaint to successful conclusion over 12 months later, including voluminous discovery, lengthy and difficult negotiations and a full week's plenary and testimonial hearing receive fees of \$10,000, while suggesting for himself an award of \$1,500 "for his time and effort in making this application, and for calling to the Court's attention the aforementioned inequities." Hurowitz Memo, p. 13.

^{*} It should be evident, not only from the record in this case but also from just the documents before the Court on this issue of fund distribution, that noone, whether a named plaintiff or class member, was awarded the maximum possible "back pay" per year of Company service. Thus Ms. Hurowitz's request for \$5,400 for her one year of work at the Company is far out of line with the entire settlement approved by this Court.

^{**} Presumbaly, Counsel Field's \$1,500 fee would either be deducted from the distribution to the named plaintiffs, which would appear to run counter to his argument, or it would more likely come out of this counsel's fee of \$10,000, reducing it to \$8,500 for the entire case. Even assuming Ms. Hurowitz's lawyer worked five hours on this matter, his time would be compensated at \$300 per hour. At that rate per hour,

II. Ms. Hurowitz's Allocated Share Of The Recovery Is Fair In Comparison To Her Participation In The Suit And The Shares Allotted To Co-Plaintiffs.

The record in this case meveals that plaintiff
Hurowitz worked for the Telephone Company for only one year,
less than any other named plaintiff, and quit her job before
the federal court complaint was even filed. She and all but
two other plaintiffs were hired at Grade 5 and were, on any
scale, less qualified by relevant education and experience
than the plaintiffs hired at Grade 7. Any argument that
being hired at a lower grade than some other more capable
women entitled the Grade 5 plaintiffs to even greater
damages is simply without merit.

Plaintiff Murowitz, who is to receive \$600 as per the current distribution plan, would be awarded an amount over the \$450 given other women class members hired the year before the suit was settled as per the pay schedule in Paragraph V(A) of the Decree. That amount should be adequate to compensate her for filing her REOC charge against the Company. The

^{** (}con't) counsel in the main case, would be compensated for only 28 hours of time. For the sake of perspective, it should be noted that the hearing on the preliminary injunction alone - just the time spent in court before Your Honor-amounted to 22 hours. Mr. Field's formulation would then compensate only one of the plaintiffs' attorneys for time in court plus a bit more and for nothing else.

speculation about the future effect of Ms. Hurowitz's not having withdrawn from the suit when she withdrew from the company is impossible to quantify. As her participation was so minimal, the effect should as well be slight.

Conclusion

The allocation of special awarded settlement funds, being based upon a definite and appropriate list of factors (Rabb Affidavit, February 5, 1974, Paragraphs 5 and 6) and meeting the unqualified approval of all the other named plaintiffs in this action, should be approved by this Court as fair and reasonable.

Respectfully submitted,

Harriet Rabb

One of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT SECOND DISTRICT OF NEW YORK

SUSAN WAGNER LEISNER, KAREN MALINOWSKI, :
LINDA GEDEON, CECILIA HUROWITZ, MYROSLAWA
WANIO, VICTORIA PRINCIPE, MARGARET KECK :
MILKMAN and JANE BOOTH, individually and
on behalf of all other persons similarly :
situated,

72 Civ. 2127

Judge Motley

Plaintiffs,

-against-

NEW YORK TELEPHONE COMPANY,

Defendant.

ORDER

Upon the facts set forth in the affidavit of plaintiff's counsel describing the bases upon which the proposal for distribution of funds for the plaintiffs in this action rests, it is

Ordered, Adjudged and Decreed that the following distribution shall be made to the named plaintiffs in this action:

| Susan Leisner | \$2957 |
|-------------------|--------|
| Jane Booth | \$2957 |
| Victoria Principe | \$1957 |
| Myrosha Wanio | \$1957 |
| Linda Gedeon | \$1957 |
| Karen Malinowski | \$1957 |
| Mimi Milkman | \$1457 |
| Cecilia Hurowitz | \$ 600 |

So ordered:

U.S.D.J.

Dated:

SUSAN WAGNER LEISNER, et al.,

Plaintiffs,

72 Civ. 2127

-against-

NEW YORK TELEPHONE COMPANY,

AFFIDAVIT

Defendant.

State of New York)
County of New York) ss:

HARRIET RABB, being duly sworn deposes and says: 1. I am one of the attorneys for plaintiffs in the above-captioned matter. I am a 1966 graduate of Columbia Law School with more than seven years of litigation experience. For the past three years, I have been a co-director of the Employment Rights Project, a clinical employment discrimination seminar at Columbia Law School. In that capacity, I have taught a course in the law of employment discrimination for six consecutive semesters and co-authored the only Title VII case book now in use in approximately seven American law schools offering similar courses. The book is also the standard reference source for the full legal staff of the EEOC General Counsel's Office. Concurrent with my classroom teaching duties, I engage, with my students, in employment discrimination litigation. In that capacity, during the past three years, the Project has handled, either as lead or cooperating counsel, approximately sixty Title VII and 42 U.S.C. § 1981 cases. These cases include King v. Georgia Power.Co., 5 EPD 8460 (5th Cir. 1973), Reid v. Memphis Publishing Co., 5 EPD 8013 (6th Cir. 1973), Smith v. Delta

- Airlines, 6 EPD 8865 (5th Cir. 1973), Lea v. Cone Mills, 5 EPD 7975 (4th Cir. 1973) and Kohn v. Royall, Koegel & Wells, 5 EPD 8504, 6 EPD 8828 (S.D.N.Y. 1973).
- 2. Richard Leisner, one of my co-counsel during the above-captioned litigation, was an associate at Fried Frank Harris Shriver and Jacobson, 120 Broadway, New York, New York, and is currently associated with the firm of Trenam, Simmons, Kemker, Scharf & Barkin in Florida.
- 3. Peter Kirchheimer is a 1974 graduate of Columbia Law School. He was employed by my office and worked on this case during the summer between his first and second years in law school.
- 4. Susan Werth Diner is a 1973 graduate of Columbia Law School. She was employed by my office and worked on this case after her graduation from law school.
- 5. Defendant New York Telephone Co., Inc. was represented throughout the proceedings by Proskauer Rose Goetz and Mendelsohn, 300 Park Avenue, New York, New York by Morton M. Maneker, a partner, and Howard L. Ganz, a senior associate.
- 6. Plaintiffs' counsel and associates billed 749 1/2 hours to the representation of our clients in the litigation and resolution of this case. In my own instance, the work required was so considerable that while I devoted 230 hours to this case, my hours logged for all my other cases combined during the course of this litigation totalled only 193. My time spent on this case was allocated as follows:

Harriet Rabb

| Motion Papers, Briefing | | 44 | hours |
|--|-------|---------|-------|
| Discovery | | 50 1/4 | hours |
| Settlement Negotiations | | 57 1/4 | hours |
| Trial/Hearing | | 28 1/2 | hours |
| Other (including, for example, preparation of witnesses) | | 50 1/2 | hours |
| | Total | 230 172 | hausa |

My co-counsel have advised me that their time was allocated as follows:

- George Cooper

| Motion Papers, Briefing | | 18 | hours |
|-------------------------|-------|-----|-------|
| Pre-trial preparation | | 1.9 | hours |
| Hearing/Trial | | 15 | hours |
| Other | | 19 | hours |
| | Total | 71 | hours |

Richard Leisner

(preparation of EEOC charges and accompanying affidavits; preparation of letters and affidavits documenting harrassment of plaintiffs; work on memoranda of law)

Total 100 hours

My associates' time was spent as follows:

Peter Kirchheimer

(research and drafting of various memoranda, interrogatories, etc.)

| cn. | n. da - m. *1 | 222 | * |
|-----|---------------|-----|-------|
| + 1 | ノレジエ | 401 | hours |

Susan Diner

(same as Kirchheimer) Total 117 hours

counsel provides for continuing jurisdiction and requires defendant to provide, for enforcement of the decree, at least li reports on their compliance with the various aspects of the decree and on the progress of the members of the plaintiff class. These reports will be forthcoming until 1977. I estimate that it will require approximately 40 hours spread out between the first report in 1973 and the last report in 1977 to read the reports, to compare the statistics and results from one period to the next, to measure if there is compliance with the decree, and generally to police the consent decree and insure that members of the plaintiff class receive the promotions, raises and training to which they are entitled. This would bring the total amount of time spent on this matter to 789 1/2 hours.

- 8. Counsel undertook to represent plaintiffs and the class of all women similarly situated without any agreement as to any fee to be paid by plaintiffs. In other words, counsel's ability to recover any fees in this matter was contingent upon achieving a favorable result in the case and obtaining fees from defendant pursuant to Title VII's allowance for attorney fees.
- 9. During the course of this litigation plaintiffs' counsel prepared and filed with the federal court and with administrative agencies the following formal documents:
 - a) Eight EEOC charges and accompanying affidavits
 - b) An order to show cause and motion for a preliminary injunction with six accompanying affidavits
 - c) An order allowing the taking of an early deposition

- d) A memorandum of law in opposition to defendants request for a second adjournment of the notice, depositions and motion for preliminary injunction hearing
- e) A motion for determination that this was a class action, with a memorandum of law and accompanying affidavits
- f) Letters to EEOC documenting the harrassment of plaintiffs Principe and Milkman by defendant
- g) A memorandum of law in opposition to defendant's motion to dismiss
- h) Three separate sets of interrogatories and notices to produce
- i) A motion to expedite defendant's response to plaintiffs! interrogatories
- j) A memorandum of law in support of plaintiffs! motion for a preliminary injunction
- k) A motion to compel defendant to answer plaintiffs' interrogatories
 - 1) Proposed findings of fact and law
- m) Plaintiffs' answers to defendant's interrogatories.

In addition a similar number of documents were filed by defendant in this case.

The litigation of this case included three hearings, the longest of which lasted 5 days, from November 27, 1972 through December 1, 1972. At that hearing plaintiffs' counsel presented witnesses and documentary evidence and cross examined witnesses presented by defendant.

Telephone Co. presented a number of novel and complex issues. Upon information and belief, it was the first case to raise important issues regarding management level employees where techniques for hiring and qualifications of employees are vague and subjective. In this case plaintiffs' counsel undertook the risk inherent in presenting any issue for the first time. Yet counsel achieved for plaintiffs and the class they represented more than a general agreement by defendant not to discriminate. Even in this case presenting the issue of subjective criteria for hiring, placement, training and promotion of management employees, downsel received a consent decree setting forth specific goals and timetables, for promotions and hiring, reporting procedures and monetary awards.

ll. Counsel in this case recovered substantial relief for the named plaintiffs and the members of their class. This relief included monetary awards, raises and promotions according to a timetable, and training.

Sections ITIC and IV of the Consent Decree provide for the advancement and promotion of women within the Traffic Department management ranks. The decree provides that at least 120 positions within specific job categories be filled by women. It also provides for individualized training programs to be developed and administered by defendant to facilitate promotions of members of the plaintiff class. As of April, 1974, thirty six vacancies within the Traffic Department have been filled by women under this decree.

Sections IITB and C provide for class members to be trained for and transferred to work within Dial Services.

As of January, 1974, at least nine women have been so trained

and either have been placed or are awaiting placement in Dial Services.

Furthermore, the consent decree provides for salary increases for members of the plaintiff class, as follows:

- a) All women hired between January 1, 1968 and August 3, 1973 directly into Grade 5 Traffic Management positions and still employed in such positions as of Adgust 3, 1973 received salary increases of 6% in anticipation of promotions to permanent Grade 7 positions. For unnamed plaintiffs, this has amounted to \$5,050.00 as of December, 1973.
- b) As noted above in this paragraph, at least 120 jobs will be filled by women by hiring or promotion according to the terms of this decree. These jobs, in 1971, carried salaries ranging from about \$13,300 to over \$20,700. Most of the jobs to be filled would, by 1971 pay scales, carry salaries of approximately \$16,800 (Salary Grade Level 10). Promotions are accompanied by 6% pay increases. Estimating the average salary gains under the decree, therefore, one must assume that at 6% of \$16,800, each promotion occasions an \$1,008 pay increase. Given 120 promotions, a rough aggregate estimate of monetary benefits accompanying the goals and timetables of the decree equals \$120,960. This is a conservative estimate since counsel has used 1971, rather than present salaries which may be expected to be higher because of cost of living increases, and because there are a number of women who will receive 6% increases on salaries of \$20,700 rather than \$16,800.

c) Women who were hired directly into Traffic Management positions at Grade 5 or above from January 1, 1963 through December 31, 1972 and who are still employed in Traffic Management will receive salary increases as follows:

1968 -- \$ 1,100 1969 -- \$ 1,000 1970 -- \$,900 1971 -- \$ 450 1972 -- \$ 450

Counsel estimates, using only the number of women hired into Traffic Management in Southern Dial (i.e., Manhattan) from June 1970 to June 1972, that those 23 women alone are eligible for increases totalling approximately \$11,500. This estimate does not include an unknown number of women outside of Southern Dial hired during '70 - '72 or the number of eligible women, statewide, hired pre-1970.

- 12. In addition the named plaintiffs recovered the following amounts:
 - A. Four plaintiffs who have left the New York Telephone Company:

Jane Booth (3 yrs. service) \$3,000

Susan Leisner (1 yr. 11 mos. \$3,000

Margaret Milkman (2 yrs. service) \$1,500

Cecelia Hurowitz (1 yr. service) \$ 645

(this includes interest on monies prior to distribution)

B. Plaintiffs who continue to be employed by a telephone operating company, thus benefitting additionally from salary increases provided in the consent decree:

(Salary increase from commencement of suit to December, 1973)

Linda Gedeon \$2,000 + \$3,490

Karen Malinowski \$2,000 + \$5,400

Victoria Principe \$2,000 + \$5,800

Myroslawa Wanio \$2,000 + \$5,400

The total recovery of named plaintiffs is \$36,235.

prescribed by the court in City of Detroit et al. v.

Grinnell Corporation, (Docket Nos. 73-1211, 73-1420 March 13, 1974 2nd Cir.) to be used in the determination of appropriate counsel fees. City of Detroit was an action under Section 4 of the Clayton Act (15 U.S.C. Section 15, 1970).

In Clark v. American Marine Corporation, 320 F.Supp. 709 (E.D. La. 1970) the court adopted standards for the determination of counsel fees under Title VII which are very similar to those set forth by the Second Circuit in City of Detroit, and are therefore likewise satisfied by the data herein provided.

said that counsel fees should not be determined as a percentage of the recovery but rather by applying a complex formula based initially on the number of hours devoted to the case by counsel. While City of Deuroit was a case in which the recovery was exclusively monetary, the recovery in the instant case is primarily injunctive and only secondarily measurable in monetary terms. Therefore, it is even clearer that the amount of counsel fees must be measured by time spent rather than amount of money recovered.

Even so, the monetary recovery in this case is substantial. Based on the estimates in the previous paragraphs the named and unnamed plaintiffs will recover \$173,745 attributable to the decree. It must be assumed that absent bad faith on defendant's part, additional raises, promotions, and training will continue during the life of the decree and for an indeterminable time in the future.

value for the time which counsel devoted to that case, the court should look to the factors and data discussed herein. Applying all of these factors to the instant case, plaintiffs' counsel is entitled to \$44,300 for the 789 1/2 hours devoted to this case, plus \$905.24 in expenses. However, in the interest of settling this litigation and achieving the results described above for the plaintiff class, counsel requested only \$36,300 from defendant as compensation for the 789 1/2 hours of work.

In arriving at the hourly rates set forth below, counsel considered all of the factors described above including the skill and experience of the various counsel, the rates for similarly qualified attorneys in the New York area, the varying rates of compensation for different types of activities, the novelty and complexity of the issues, and the other factors set forth in City of Detroit, concluding as follows:

| Harriet Rabb and George Cooper | \$ 80 | per hour |
|---|-------|----------|
| Harriet Rabb and George Cooper trial time | \$100 | per hour |
| Richard Leisner | \$ 45 | per hour |
| Susan Diner | \$ 40 | per hour |
| Peter Kirchheimer | \$ 30 | per hour |

The hours spent by each attorney at these hourly rates, plus the cost of expenses, equals the \$45,205.24 to which counsel was entitled and could have demanded. However, counsel sought \$36,300 which defendant paid without issue and to which all plaintiffs except plaintiff Hurowitz have made absolutely no complaint.

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Harriet Rabb

Signed and Sworn before we this 17 m day of Mag

Notary Public

MOWARD J PHONE YORK MOTARY PUBLIC, EVAN TO SERVICE OF THE PROPERTY OF CHARLES OF THE PROPERTY OF THE PROPERTY

SUSAN WAGNER LEISNER, et al., :

72 Civ. 2127

Plaintiffs,

Judge Motley

-against-

. :

NEW YORK TELETHONE COMPANY,

ZPRTDAMEN

Defendant.

State of New York) County of New York) ss:

GEORGE COOPER, being duly sworn deposes and says: 1. I am one of the attorneys for plaintiffs in the above-captioned matter. I am a 1961 graduate of Harvard Law School with more than eleven years of litigation exp rience. For the past eight years I have been a professor lumbia Law School. During the last three of those years I have been a co-director of the Employment Rights Project, a clinical employment discrimination seminar and litigation project at Columbia Law School. I have co-authored a Title VII casebook, Equal Employment Law and Litigation which is now used in approximately seven American Law Schools offering employment rights seminars similar to that at Columbia. I have also co-authored another law school text on Law and Poverty, and have written at least six major articles in law journals on various subjects including employment discrimination. I have also served as Litigation consultant to NAACP Legal Defense Fund; Consultant to U.S. Equal Employment Opportunity Commission; Member, Board of

Directors, New York Civil Liberties Union; and Member,
Board of Directors, Center on Social Welfare Policy and
Law. Concurrent with my teaching duties, I engage in
employment discrimination litigation. I have served as
plaintiffs' counsel in these major cases, among others:
Espinoza v. Farah Mfg. Co., (1973); Griggs v. Duke Power Co.,
(1971); King v. Ceorgia Power Co., (1972); United States
v. Local 189, Papermakers and Paperworkers, (1969);
Chance v. Board of Examiners, (1971); and Hicks v. Crown
Zellerbach Co., (1969). The foregoing credentials and
experience are more fully set out in the attached biographical
sketch.

2. I participated in the citled case at all stages, including investigation and discovery, pre-trial preparation, trial and negotiations. The hours which I spent on each aspect were as follows:

Work on papers, briefing 18 hours

Pretrial preparation 19 hours

Hearing/Trial 15 hours

Other (Negotiation, Investigation) 19 hours

Total 71 hours

Ocal /i no

George Cooper

Signed and Sworn before me this day of 1974.

Notary Public

Biographical Sketch

GEORGE COOPER Professor of Law Columbia University

Office:

435-West-116th Street---New York, New York 10027 (212) 280-4291

Home:

355 Riverside Drive New York, New York 10025 (212) 850-8558

Personal Data

Born: Baltimore, Md. 1937 Separated

Education

B.S., University of Pennsylvania 1958 LL.B., Harvard University 1961 Summer Program in Economics for Law Professors, University of Rochester, 1972 Certificate in Advanced Celestial Navigation, Hayden Planetarium, 1972

Honors

Member, Board of Editors, Harvard Law Review 1959-61 Sheldon Traveling Fellowship (Travel in India and Africa) 1962-63

Full-Time Employment

Officer, U.S. Army 1961-62
Associate, Covington and Burling 1963-66
Law Paculty, Columbia University 1966 to date
Assistant Professor 1966-69
Associate Professor 1969-70
Professor 1970-date

Fields of Teaching Interest

Federal Tax Policy Civil Rights

Poverty Law Contracts

Other Employment

Director, Study of Implications of Employment Testing under Anti-discrimination Laws, Summer 1968

Co Director, Institute for Legal Service Assistants, Summer 1969 (a program training paraprofessionals for work in neighborhood law offices and legal and clinics)

Faculty Director, Center on Social Welfare Policy and Law (a national center for test litigation and education in the fields of welfare, employment and the aged) 1970-71

Co-Director, Employment Rights Project of Columbia Law School (a litigation and training project) 1971 - date

Other Activities

Litigation Consultant to NAACP Legal Defense Fund Litigation Consultant to Washington Research Project Consultant to U.S. Equal Employment Opportunity Commission

Member, Board of Directors, Center on Social Welfare Policy and Law

Member, Board of Directors, New York Civil Liberties Union

Member, National Advisory Committees on Tax and Welfare Policy for Senators Robert P. Kennedy, Bugene McCarthy and George McGovern

Major Articles

Negative Basis, Harvard Law Review, May, 1962 (proposing that property should be deemed to have negative value for some purposes under federal income tax laws)

Tax Treatment of Business Grassroots Dobbving:
Defining and Attaining the Public Policy Objectives,
Columbia Law Review, May, 1968 (proposing that "public interest" lobbying groups ought to be subsidized through tax laws in order to counterbalance the power of business interests)

GEORGE COOPER

- 3 -

Major Articles (con't)

Seniority and Testing Under Fair Employment Laws: A General Approach to Objective Criteria of Siring and Promotion, Harvard Law Review, June, 1969 (proposing that a result-oriented test-of-discrimination rather than an intent-oriented test is needed to make these laws effective) (with Richard Sobol, Esg.)

Trends in the Taxation of Unrelated Bu iness Income, 29th Annual N.Y.U. Institute on Federal Taxation (1971) (analyzing developments under Tax Reform Act of (1969)

Working Wives and the Tax Law, Rutgers Law Hevicw, Fall, 1970 (analyzing discriminatory aspects of faderal taxes which discourage wive from working)

The End of the Beginning: Employment Discrimination Law Today, Columbia Human Rights Law Review, Winter 1973/(analyzing past developments and suggesting future goals in employment discrimination litigation)

Books

Edual Employment Law and Litigation (1972) (with Harriet Rabb), Esc.)

Cases and Molerials on Law and Poverty (2d ed. 1973) (with Curtis Berger, Paul M. Dodyk, Monrad Paulsen, Philip Schrag and Michael Sovern)

Major Litigation Activities

Espinoza v. Farah Mfg. Co., U.S. Supreme Court (1973)

Griggs v. Duke Power Co., U.S. Supreme Court (1971)

King v. Georgia Power Co., U.S. Court of Appeals, Fifth Circuit (1972)

Moody v. Albemarle Paper Co., U.J. Court of Appeals, Fourth Circuit (1972)

United States v. Local 189, Papermakers and Paperworkers, United States Court or Appeals, Fifth Circuit (1969)

Biographical Sketch

GEORGE COOPER

Major Litigation Activities (con't)

Leisner v. New York Telephone Co., U.S. District Court, Southern District of New York (1972)

Chance v. Board of Examiners, U.S. District Court, Southern District of New York (1971)

Hick v. Crown Zellerbach Co., U.S. District Court, Eastern District Louislana (1969)

(all as Counsel for Plaintiffs)

SUSAN WAGNER LEISNER, et al., :

72 Civ. 2127

Plaintiffs,

Judge Motley

-against-

NEW YORK TELEPHONE COMPANY,

AFFIDAVIT

Defendant.

State of New York County of New York): ss:

HARRIET RABB, being duly sworn deposes and says:

- 1. I am one of counsel for plaintiffs. I am making this affidavit to amplify and clarify my affidavit of February 5, 1974 regarding distribution of settlement monies among the plaintiffs.
- 2. The distribution was calculated upon a variety of factors, no one of which was completely controlling.
- 3. One factor used to determine awards to each plaintiff was length of continuous service with the Company or another telephone operating company. While the bulk of that information appears throughout the extensive record in this case, it is extracted below:

| | | Started work | Left Work | Length of Service |
|----|--------------------|--------------|---------------------------|----------------------|
| 1. | Princîpe, Victoria | 12/70 | still employed | 40 mos. |
| 2. | Booth, Jane | 9/70 | 8/73 | 36 mos. |
| 3. | Malinowski, Karen | 6/71 | employed by C 2 P Bell | 34 mos. |
| 4. | Gedeon, Linda | 6/71 | employed by N.J. Ball | 34 mos. |
| 5. | Wanio, Myroslawa | 9/71 | still employed | 31 mos. |
| 6. | Milkman, Mimi | 10/70 | 8/72 | 23 mos. |
| 7. | Leisner, Susan | 3/71 | 1/73 | 23 mos. |
| 8. | Hurowitz, Cecilia | 3/71 | 4/72 | 14 mos. |

- 4. The foregoing paragraph reveals that Ms. Hurowitz left the company in April, 1972. The federal complaint in this action was not filed until one month later, in May, 1972. Prior to her resignation, Ms. Hurowitz had filed an EEOC charge and affidavit in support of that charge. Upon information and belief, EEOC did not notify the New York Telephone Company that that charge had been filed, if ever, until well after Ms. Hurowitz had resigned from the Company.
- 5. Another factor considered in the distribution was that once the action was filed, plaintiffs, all of whom except Ms. Hurowitz continued to be employed by the defendant, were exposed to the risk that their employment would be adversely affected by their plaintiff status. Indeed, as Plaintiff Principe noted in a letter to me attached hereto as Exhibit A, as to Plaintiff Milkman,

- "... the treatment that she received resulted in her resignation." Furthermore, there is no way of measuring the extent to which participation in this law suit resulted in less than optimal ratings in annual performance and salary reviews of incumbent plaintiffs. See e.g., the record with respect to Plaintiff Leisner's unduly low annual rating once her participation in the suit became known.
- 6. Incumbent named plaintiffs were actively involved in the pre-trial stages of this litigation and that involvement constituted another factor in making the distribution. For example, in preparing our own interrogatories, plaintiffs' counsel consulted necessarily and frequently with our clients who were still employed by the Company and therefore had access to relevant information and materials. They provided us, for example, with background data such as current company affirmative action plans, announcements of newly scheduled CDP 10-22 and CDP 5-7 programs and their participants, names of current district and division personnel and revised pay schedules for the various levels of Traffic management. The full range of their involvement in providing documents, giving information and interpreting data we needed and received is too extensive to describe. Because the data we needed was developed after Ms. Hurowitz quit work, despite her intention to be helpful where possible, there was really no way she could have been of assistance to us in gathering the information. In responding to interrogatories, and particularly in settlement discussions, frequent consultation with our clients was necessary. For

example, in fashioning the details of the heart of the settlement, my office was in touch with the incumbent plaintiffs to review alternative plans presented by defendant for training, transfer, upgrading and promotions. Despite the attorneys' intense involvement in the case, because we were not in daily contact with the actual work situation, we were not fully able to assess the impact of the offers made on the class we represented. Particularly helpful in these efforts were Plaintiffs Booth and Leisner. A plaintiff who was not working for the company could not have contributed to this process.

- 7. Two plaintiffs, wean Leisner and Jane Booth, were witnesses at the preliminary injunction hearing and were the only two witnesses called by plaintiffs in the five day trial. Their appearance required not only their time in court but a considerable period of time with counsel during the preceding week in preparation for their examination. This too was considered in proposing the monetary distribution.
- employment not only risked unfavorable ratings from the Company but were actually the victims of harassment and surveillance. That factor too was weighed in making the distribution. The situations of two plaintiffs, Victoria Principe and Mimi Milkman became so intolerable that complaints of harassment were made to EEOC on their behalf. See Exhibits B and C attached. While their difficulties did not become so acute as to require a separate EEOC complaint, all the plaintiffs who remained with the

Company after the suit was filed did suffer continued surveillance and harassment. See the letters of Victoria Principe, attached as Exhibit A and Linda Gedeon [Griggs] attached as Exhibit D.

9. In sum, the basic premise for distribution of the settlement monies was that the plaintiffs should be treated equally but for any special factors which bore on their special circumstances. The four plaintiffs who remained phone company employees have about the same length of service, suffered approximately the same harassment and were equally helpful to counsel in pursuit of this litigation. All of them (Malinowski, Wanio, Principe, and Gedeon [Griggs]) received \$2,000. Plaintiffs Booth and Leisner received \$3,000 each. Leisner was responsible for initiating this litigation and collecting most of the data necessary for commencing and pursuing the case. Booth, in addition to initially having the greatest length of service with the company, along with Leisner, was extremely helpful as described more fully in paragraphs 6 and 7 above. Plaintiff Milkman's lesser distribution resulted from her relatively brief tenure with the company and her early departure which though only several months after Hurowitz's resignation, resulted from severe harrssment and discouragement by her supervisors. In these circumstances, Plaintiff Hurowitz received her share based on the shortness of her tenure, the fact that she was not exposed to risk or harassment because she quit work before the suit was filed and because she was unable, despite her good intentions, to be of any assistance on behalf of the class to counsel in the course of this litigation.

- 10. Ms. Hurowitz's counsel objects to the amount of her distribution on two grounds. He initially states that Ms. Hurowitz's cause of action was for back pay citing one paragraph in the complaint in this action. The prayer for relief however, additionally sought hiring, training, transfer, upgrading, promotions, and salary increases, all based on nondiscriminatory criteria as well as back pay, in an effort to eradicate the effects of discrimination. The Court's decree ordered vigorous goals and timetables for affirmative relief but did not award back pay to any members of the class, including the named plaintiffs. The specific monetary benefits which were included in the decree were in the nature of front pay, prospectively attaching to the salaries of incumbent, identifiable victims of discrimination. In sum, any employee who had left the Company, as had Ms. Hurowitz, at the time the decree was entered would not have received either the benefit of the considerable affirmative relief or the salary increments effected.
- to be arguing that the Court should not have entered a decree, whatever its other terms, unless it included back pay at least for the named plaintiffs. However, as the court stated in Hecht v. Cooperative for American Relief Everywhere, 7 EPD 9049 (SDNY 1973) "the creation of a workable and comprehensive plan for opening up employment opportunities to women in the future, which has been attempted here with the agreement and participation of members of the plaintilf class and officials at [defendant] will be of greater significance than a larger back pay

fund in [defendant's] meeting the requirements of Title VII." (at p. 6412) In that case, Judge Lasker approved a settlement over the objections of one named plaintiff that the injunctive relief for the class and monetary fund established were not sufficient.

12. Ms. Hurowitz is the only member of the entir plaintiff class to object to the Court's decree in this matter. Her objection does not, on the record, establish that the Court abused its discretion in the order. In Bryan v. Pittsburgh Plate Glass Co., 7 EPD 9269 (3rd Cir. 1974), more than twenty percent of the plaintiff class objected to the decree enter d. The Circuit Court said, "While the proportion of the class opposed to a settlement is one factor to be considered in assessing its fairness . . . a settlement is not unfair or unreasonable simply because a large number of class members oppose it. The drafters of Rule 23 chose as a means of protecting the class the requirement that the district court approve the settlement. They did not require rejection of a settlement on objection of a given part of the class." 7 EPD at 7239.

13. The factors constituting the basis upon which the distribution among the named plaintiffs was proposed were fair and reasonable. This Court not having abused its discretion in its Decree of September, 1973 and Order of March, 1974 should not now set aside its order regarding the distribution among the named plaintiffs.

Stormics Rall

Harriet Rabb

Sworn to before me this 20th lay of May, 1974.

.41 Notary public

January 10, 1974 Page 2.

\$100 from the previous budget for each of you. If some say \$1,000, some \$300, some \$500, etc., I'll add the amounts and divide by 8 and deduct 1/7 of the amount over \$300 from each of you.

If you have any questions, please call me. To those of you who sent kind words, George and I are truly grateful. Letters like those are the best reward for lawyering.

Sincerely,

Howich

Harriet Paob

Cecelia should receive

\$300 \$1,000 or \$500

Vernie M. Trumpe

Signature

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RICHARD M. LEISMER
Attorney At Law
120 Broadway
New York, New York 10005

July 28, 1972

BY HAND

Daniel Mackey, Esq. Equal Employment Opportunity Commission Room 4000 26 Federal Plaza New York, New York

Re: Leisner, et al. v. New York Telephone Company

United States District Court Southern District of New York 72 Civ. 2127

EROC Case No. YNY 2-148 EEOC File No. TNY 2-0485

Dear Mr. Mackey:

I am writing to you in a capacity as co-counsel for Ms. Margaret Meck Milkman. Ms. Milkman has filed a complaint with your office (EECC File No. TWY 2-0485) charging her employer, New York Telephone Company (the "Company") with having violated Title VII of the 1964 Civil Rights Act ("Title VII") by maintaining policies and practices of sex-@iscrimination against its women employees in hiring, salary, promotical, and other conditions of employment. As your records will indicate, this complaint was related to and filed in connection with a number of similar complaints giled by other women employees of the Company. On May 18, 1972 Ms. Milkman and these women, in accordance with the provisions of Title VII, filed suit against the Company in the United States District Court for the Southern District of New York (72 Civ. 2127).

I. Successful Career Prior to Filing of Sex Discrimination Complaint

Ms, Milkman entered the employ of the Company on or about October 26, 1970 as a Dial Assignment Supervisor ("DAS"), a management level 5 position, assigned to centra-

lized midtown line assignment. Early in 1971 she was selected to attend the ten-week 120 loading course. Ms. Milkman excelled in the course, receiving a grade of 98.7%.

Following the conclusion of the ten-week loading course, Ms. Milkman was transferred to the 230 West 36th Street office where she was assigned as a trunking administrator. The duties and responsibilities of trunking were largely unrelated to the syllabus of the just completed ten-week loading course. At this time in 1971 the management position of trunking administrator was new to the Company, and Ms. Milkman developed the position horself "from the ground up"; she established training procedures for the clerks she supervised; she determined what type of data and reports would be appropriate; and she refined these procedures as time passed.

In July 1971 the Company judged her job performance, giving her a highly favorable "S+" annual evaluation and a very high 9% pay raise.

II. Company's Initial Marassment After Filing of Sex Discrimination Complaint

In the Fall of 1971, Mr. Milkman first considered taking formal steps to remedy the Company's policies and practices of sex-discrimination. In November 1971 the Company through certain of its management personnel first became aware that a group of its women management employees (which included Ms. Milkman) had begun to take formal steps to challenge and end the Company's policies and practices of sex-discrimination. At this time Ms. Milkman was interrogated a number of times with respect to her involvement in any formal action against the Company. Most of the women who subsequently became plaintiffs and some who were harassed, frightened or otherwise "snoouraged" by the Company to drop out of the action were also questioned at this time. These interrogations ranged in intensity from persistent questioning as to the individuals involved in any such action to thinly veiled threats of retaliation. (More complete descriptions of these interrogations are set forth in affidavits of the various women involved in the above-captioned action submitted in connection therewith and previously delivered to your office.) As the affidavits show, following one or more interviews, interrogations, or threats made on behalf of the Company, a number of women ended their former participation in formal action against the Company. Thereafter, the women who ultimately became plaintiffs in the above-captioned action cealed discussing their sex-disprimination complaints against the Company with their supervisors.

By mid-winter 1972, the question of the sexdiscrimination complaint against the Company appears to
have been all but forgotten by higher management personnel.
Nowever, in early May 1972 the Pederal Communications Commission, in conjunction with the Equal Employment Opportunity
Commission's ATST task force, promulgated its intention to hold
hearings during the first weeks of May with respect to sex-discrimination within the Company. The Company's interest was renewed in the complaints and complainants of the previous
autumn. It is commonly known within the Company that at
this time the supervisors of the women involved in the
above-captioned action were tutored to prepare them to
testify before the hearings. While the women involved in the
above-captioned action did not choose to testify in
person before such hearings, the preparations taken by
the Company and the public notoriety given to the hearings,
again centered attention within the Company on those women
who had publicly and formally voiced their opposition to
the Company's policies of sex-discrimination.

III. Company Ends Career Momentum

An understanding of the Company's knowledge of and attitude towards the complaints made regarding its policies and practices of sex-discrimination and the women who made them, as related above, is essential in order to fully appreciate the context in which Ms. Milkman functioned after November 1971.

Although there were certain challenges attendant to inaugurating the trunking administrator's job, after the initial wrinkles were ironed out of the position, the job itself proved to be a limiting one and was soon regarded within the Company as a "dead end". In comparison to other management assignments within the dial unit trunking provides a limited scope of experiences and responsibilities. Time spent in trunking, therefore, did not (and does not) provide the promotion-enhancing experience available in other positions within the dial unit. By late Fall of 1971 Ms. Milkman had been with the Company over a year, had received excellent training grades, and job evaluations, but had not received a promotion. Accordingly, she expressed her concern with the lengthening period of time she was spending in trunking and requested a transfer to a new assignment.

By Spring 1972 a change from the career-limiting trunking position would have been both natural and appropriate. Ms. Milkman had already been trained in the 130 tenweek loading course to handle the job of a facilities assist-

ant, a management level 6 jcb which would have exposed her to a greater range of responsibilities and experiences within the dial unit. Within the Company, those individuals who remain in the same job position for periods of time exceeding a year are not promoted as often as those who tend to be transferred to a new position after a year or less in one spot. Stated another way, the Company makes a practice of periodically switching jet assignments for those individuals whose careers have been maked for successful advincement. Based on her performance up to the time when the Company learned of her involvement in this action, Ms. Milkman certainly had every indication to believe she would follow the route of success.

Beginning in early 1972 Ms. Milkman reiterated on many occasions to her supervisors her request to be transferred out of trunking. Although Ms. Milkman's supervisors invariably promised she would be transferred, they varied the conditions precedent to or date for such transfer as each previous condition was satisfied and as each date passed. By Spring 1972 it was apparent that the Company's pronouncements were not sincers. The forward progress of Ms. Milkman's career which had been certain and unimpeded prior to the Company's knowledge of her involvement in the sexdiscrimination complaint was completely dissipated, and she was "stuck" in a dead end job.

IV. Harassment Becomes Relaliation

Ms. Milkman's career lost its momentum following the first incidents of harassment in Fall 1971. Beginning in May 1972 - after the above-captioned action was filed in Federal Court - her career in the Company was first attacked and then utterly destroyed. Mr. Steve Korba; the Dial Assignment Supervisor for the West 35th Street office, embarked on a concerted campaign of activities ranging from repeated petty criticism to outright harassment. During this retaliation campaign she was in the same office performing the same job in which she had been formally rated prict to her involvement in this action.

Mr. Korba's tactics included "counseling sessions" oriticizing Ms. Milkman for poor job performance. Mr. Korba indicated strongly on a number of occasions that his judgment was founded in part on her failure (in his opinion) to work sufficient numbers of hours of overtime. This complaint was made despite the fact that he already knew Ms. Milkman's mother-in-law was hospitalized with a cancerous brain tumor diagnosed as terminal. Ms. Milkman had been spending substantial periods of time at the hospital and with her family; during the pendency of this illness: as far as overtime was concerned - her family needed her time more than her employer.

Ms. Milkman was distressed to witness the erosion of confidence between herself and Mr. Korba. In hopes of improving the situation, Ms. Milkman indicated her willingness to spend more of her time coordinating her work with Mr. Korba and to take advantage of his counsel and advice. Mr. Korba refused, however, to make himself available to Ms. Milkman during working hours on a regular basis for these or for other job related purposes. While it remained among Ms. Milkman's responsibilities to make herself available for consultation with the people she supervised, she was offered no mutuality from Mr. Korba, who was responsible for her supervision.

Mr. Korba became highly critical of minor errors in Ms. Milkman's work, even though as trunking administrator Ms. Milkman was responsible for very substantial weakly volume of reports within the office.

Beyond Mr. Korba's apparent fascination with the minutiae of one or two individual reports, his criticisms were unravorable and derogatory but were not directed to the actual and substantive areas of Ms. Milkman's job responsibilities.
Mr. Korba's criticisms were self-fulfilling in effect hoisting themselves by their own retaliatory bootstraps. Because it had been determined in advance to place an exaggerated and unwarranted unfavorable emphasis on subjective aspects of Ms. Milkman's job, the criticisms handily avoided considering the actual substantive duties of Ms. Milkman's job which she continued to discharge responsibly and faithfully. The ultimate purpose of Mr. Korba's tactics soon became clear.

On or about the week of May 27, 1972, shortly after Leisner et al v. New York Telephone Company was filed, Ms. Milkman was informed by Mr. Korba that he was giving her one month to improve her job performance. Ms. Milkman was shocked and distressed by this drastic turn of events. Ms. Milkman inferred from Mr. Korba's tone and implications that he intended to ask for her resignation.

V. Company Destroys Career in Retaliation

Ms. Milkman's career was left in this state of tension until on or about June 27th when Mr. Ed Nolte, Ms. Milkman's former Traffic Superintendent, came to the West 36th Street office and along with Mr. Norba called Ms. Milkman into Mr. Korba's office. Mr. Nolte stated that the purpose of his visit was to give Ms. Milkman her annual job evaluation. Ms. Milkman indicated her surprise because under company policy she was not due for an evaluation until sometime late-July. Mr. Nolte could give no explanation consistent with Company policy to explain why Ms. Milkman was being given a formal evaluation at that time. Mr. Nolte claimed that Ms.

Milkman was being given a formal evaluation in June because she had been in the West 36th Street office for one year. In fact, Ms. Milkman had been in the Wost 36th Street office for 14 months. As the tone and substance of the evaluation are set forth below, the irregular timing of the evaluation will take on added importance.

The evaluation was highly pritical of Ms. Milkman and gave her a very unfavorable "C-" rating with a discouraging pay raise of less than 3%.

Because this action is founded on charges of sexdiscrimination, it is all the more remarkable that the evaluation devoted substantial attention to Ms. Milkman's "highly
unsatisfactory personal grooming". When Ms. Milkman pressed
Mr. Nolte and Mr. Korba to cite specific examples of "highly
unsatisfactory personal grooming", they indicated that Ms.
Milkman occasionally sat on desks during conversations and that
once or twice she had been criticized for wearing short skirts;
they also stated that Mr. William Stouges had spoken to her
about wearing inappropriate clothes for office attire. Ms.
Milkman indicated that Mr. Stouges had never made such a
statement.

In addition the evaluation singled out for criticism Ms. Milkman's performance in setting up a special study during the week in which the final diagnosis of Ms. Milkman's mother-in-law's cancerous terminal brain tumor was made. It was calquatingly unfair to place such emphasis on this study. During that week, Ms. Milkman was understandably preoccupied and the emotional strain on her had been apparent to everyone in the office; yet Ms. Milkman's performance during this time of unusual stress and personal tragedy was selected by the Company as representative of her year's work.

The evaluation was also strongly critical of Ms. Milkman's so-called job attitude. Ms. Milkman was told giving her criticism was like "water washing over a duck" and that she did not seem to care bout anything. Ms. Milkman protested, answering that she cared very much about advancing her career in the Company -- enough so that she had asked numerous times to be transferred from the limiting trunking position to one which was more challenging and promotion enhancing. No one had ever criticized Ms. Milkman's attitude or likened her to any animal, duck or otherwise, prior to the time of her involvement in organized action against the Company's policies and practices of sex-discrimination.

Ms. Milkman was told that the individuals who in addition to Mr. Korba participated in making up Ms. Milkman's

Daniel Mackey, Esq. highly unfavorable 1972 evaluation included Messrs. Wolte, stouges, Uhesmann and Mss. Fazziola and Seise. These were doubtless some of the same individuals who less than a year earlier in 1971 had judged Ms. Milkman's performance of the same job in the same office so favorably. Indeed, Messrs. Stouges and Uhesmann, as a result of promotions and job transfers, had not worked with Ms. Milkman on a regular basis for a very substantial period of that year. At that time their opinion of Ms. Milkman's performance of the same job in the same office was a highly favorable "G+" rating. Now after and practices of sex discrimination, their opinion of Ms. Milkman's performance was highly unfavorable. The only new ingredient in Ms. Milkman's career was her involvement in activities designed to curtail the Company's discriminatory policies. In the Pall of 1971 the Company had warned the women In the Fall of 1971 the Company had warned the women involved with Ms. Milkman in such action of the dangers of participating in formal action against the Company's policies of sex-discrimination. In May 1972 after the action was filed, the Company learned that its harrassment had not been completely successful. As far as Ms. Milkman was concerned, the Company had made good its threats --- first by petty harassment and criticism, then by self-serving subjective attacks on her job performance, and finally with a devastating evaluation. The evaluation grounded in subjectivity and fabricated of exaggerated half truths in subjectivity and fabricated of exaggerated half truths and prejudicially selected irrelevancies was the finale of the Company's campaign. On July 7, 1972 Ms. Milkman tendered her resignation, effective as of August 12, 1972. order that you might appreciate exactly what has happened to Ms. Milkman since she first took steps to vindicate the civil rights secured to her by federal statute. As you know, this is not the first instance in which a woman involved with this Title VII action has had her career damaged apparently as a direct result of such involvement. As co-counsel in this action, I urge you to consider as a totality the incidents of harassment detailed in the As co-counsel in this action, I urge you to consider as a totality the incidents of harassment detailed in the affidavits, the treatment of Victoria Principe as set forth in my letter to you dated June 28, 1972, and the treatment of Ms. Milkman as set forth herein. Please consider carefully whether these facts set forth a pattern of behavior which violates Section 704(a) of Title VII and whether the company's behavior constitutes appropriate grounds for your agency to take action under Section 705(f)(2) of Title VII.

A-106

Before she initiated an action under Title VII
Ms. Milkman looked forward to a bright career within the
Company. Now less than ten weeks after papers were filed in
federal court and before any determination has been had on
the merits of her case, the has been virtually forced to
resign, and her once promising career has been utterly
destroyed. Ms. Milkman's employment record is besmirched
by this recent irregular, unfavorable and unwarranted evaluation. If Section 704(a) has been violated, this evaluation
must be erased from the Company's records.

Whe first complaint relating to this action was filed with your office in september 1971. Prior to the filing of the action in federal court, because of the voluminous backlog of cases in your office, you were unable to even begin an administrative investigation of the Company's policies and reactices of sex-discrimination. Just one day after your office permitted the issuance of a "right to sue" letter, the women filed their action in federal court on May 18, 1972. The women have vigorously prosecuted their cases (which includes a plea for injunctive relief to end the Company's harassment), but the Company's counsel has sought and gained postponement after postponement. Today, nearly a year after the filing of the initial complaint, the plaintiffs have yet to have the merits of their case when the court proceedings will begin to deal with the actual merits of this case. In the almost eleven months since september, 1971, however, the Company has been permitted with no opposition to implement a subtle and invidicus mix of policies seeking out, isolating, threatening, harassing, and otherwise disposing of the plaintiffs

Section 704(a) of Title VII prohibits as a separate violation of the statute any retaliation by an employer against employees who have charged their employer with policies and practices of sex discrimination or against employees who participate in any action related to such complaints. If your agency chooses not to invoke its powers under Section 706(f)(2), then as far as these plaintiffs are concerned, the prohibition against harassment and retaliation set forth in Section 704(a) of Title VII is made valueless - mere words on paper without meaning instead of the guarantor of civil rights intended by the statute. There are three certain results which flow from a failure to protect these women immediately from the Company's violations of Section 704(a): (1) the women involved in this action will continue to be isoled one by one and detached from this action. Approximately

a dozen women expressed firm intentions to join in this action in the Fall of 1971; following the initial interrogations and threats described above, only eight women remained courageous enough to undertake formal action. Since that time, two more women have left the employ of the Company. There is no way to know how many more potential and actual charging parties will be forced out of the Company; (2) employees will be deterred from vindicating their civil rights secured by law; other amployees of the Company and other large and powerful corporate employers will see that there is no protection available for an employee who wishes to expose violations of Title VII and at the same time remain an employee; and (3) the Company will be free to continue to flout the law with impunity; the Company and other large corporate employers will see there is, in fact, nothing to prevent them from harmssing and otherwise retaliating against anyone who dares to charge them with violations against anyone who dares to charge them with violations of the law. I for one cannot believe that such results were intended by the framers of Title VI; nor ear I believe that such results would be willingly to agency in view of its broad administrative. Owers and the clear mandate of Sections 704(a) and 705(E)(2). I believe that the facts set forth in this letter and other papers related to the above captioned action and previously submitted to you warrant your agency is concerned further. submitted to you warrant your agency's concerned further attention. If you have any questions regarding this matter or if I may be of assistance, do not hesitate to be in touch with me (212-964-6500). Lichard M. Leisner Donald A. Derfner, David Copus A-108

During the week of March 27, 1972 Ms. Principe was reassigned by Mr. Lou Krouse, Traffic Superintendent, to the position of facilities supervisor. This reassignment was looked upon as a promotion for four reasons: first, the facilities supervisor's job was usually filled by a level six and Ms. Principe was still a level five; second, work as a facilities supervisor encompassed a wider scope of activities in the loading department and greater responsibility than did trunking, third, facilities work involved a greater exposure to other aspects of the traffic dial department than did trunking, and fourth, the expanded experiences and responsibilities would enhance Ms. Principe's prospects for future advincement. Within the Company, trunking is generally regarded as a "dead end" position.

Ms. Principe was informed that she would perform all the duties of the facilities supervisor's position until Ms. Sarah Acconnell, who had taken a leave of absence for physical disability, was able to return to this position. Mr. Krouse, however, categorically promised that under no circumstances would Ms. Princips return to trunking when Ms. McConnell returned to the office. Mr. Krouse indicated that both the Company and Ms. Princips's career would be best served if she were given broader experience than could be provided in the position of trunking supervisor. On'at least one occasion in late April 1972 Mr. Clifford Nordquist, the District Traffic Superintendent, stated to Ms. Princips that she would not be returned to trunking because she had learned all that she could in such a limiting position, and the Company assignment.

On or about May 8, 1972 Mr. Krouse inforted Ms. Principe that she would also be assuming the responsibilities and duties of Mr. Kevin O'Leary, her immediate supervisor, the Dial Service Supervisor ("DSS"), a management level ten job, and the highest ranking management position in the 204 Second Avenue office, while Mr. O'Leary attended the six-week Nyack trained course. Shortly thereafter, on at least one occasion, Ms. Principe spoke on the telephone with her District Supervisor, Mr. Barlow, who indicated his knowledge and acquiescence to this arrangement.

On May 17, 1972 Ms. Pratnicki reported to the 204 Second Avenue office and Ms. Principe began to familiarize her with the operations of the office. Ms. Principe was on Yacation from May 20, 1972 until June 4, 1972.

On June 5, 1972 Ms. Principe returned from vacation expecting to assume the responsibilities of both the facilities supervisor's position and the office DSS; however, Ms. Pratnicki was still reporting to work at the office and was approving to act in the capacity of the office DSS. Ms.

to discuss the nature of Ms. Principe's position in the office over the telephone; however, on at least four occasions he promised to come to the office for the purpose of discussing her position. On a number of occasions Mr. Krouse did not come to the office as he promised. On at least two occasions when Mr. Krouse did come to the office and Ms. Principe requested to speak to him, Mr. Krouse would not discuss the problem with her.

On June 12, 1972, in the midst of this confusion and apparent communications black-out, Ms. Sarah McConnect returned from her disability leave of absence and resumed the responsibilities of her former assignment, the facilities supervisor. Ms. Pratnichi was still assigned to the office and appeared to be acting in the capacity of the DES. Not only did this turn of events leave Ms. Princips without a job assignment within her office, but the return of Ms. McConnell actually left Ms. Princips with no desk assigned to her in the office, no place to sit, and no telephone line assigned to her. Despite renewed efforts and attempts to clarify her status within the office Ms. Princips had received no answer by the morning of June 15, 1972 when she left the office for one and one-half days for minor surgery. Although Mr. Krouse's orders put an end to two frustrating weeks of uncertainty and confusion, Ms. Principe was shocked and disappointed at the demotion effected by the

A-112

this chain of events can be more fully appreciated by comparing the marker of people Ms. Princips supervised before and after the above-captioned action was filed. In carry March 1972 as a trusking supervisor Ms. Princips supervised that were of approximately four people; from late March 1972 until June 19, 1972 as a facilities supervised the work of approximately nime people; had she been possitted to take charge of the 204 Second Avenue office curing the absence of Mr. O'Leary, as she had been proximately twenty-two people; Now that a has been returned to the position of trunking supervising the work of approximately twenty-two people; Now that a has been returned to the position of trunking supervisor, Ms. Princips is semptimes supervising only three people had in no event is she supervising only three people had in no event is she supervising only three people had in no event is she supervising provided that four. This demotion and its resulting decrease in Ms. Princips's responsibilities and promotion enhancing job experience was in direct conventiation of specific prior promises and representations made by her supervisors. The events which led to this abrupt change in direction of Ms. Princips's captioned action became known within the Company. The full impact of the demotion effected by Thus, in March, April, and early May, prior to the filing of the above-captioned action, Ms. Principe seemed to have escaped the "dead end" trunking position. Now within a few weeks of the filing of the law suit, Ms. Principe has been returned to the "dead end" position of trunking. As one of Ms. Principe's attorneys, I believe it is necessary to provide you with this information in order that you might consider whether these facts constitute appropriate grounds for the invocation of your agency's authority to enjoin violations of Section 704(a) of Title 7 pursuant to the powers vested in your agency by Section 706(f)(2) thereof. 706(f)(2) thereof.

A-414

Dear Cicilia,

your name from the complaint, do you heally be would have a "slean heend" there your have less how york

Tractice us gainly unite morniory accounts, where do the Dunch Worker had anything but our heat interests in mind

A-116

January 10, 1974 Page 2. \$100 from the previous budget for each of you. If some say \$1,000, some \$300, some \$500, etc., I'll add the amounts and divide by 8 and deduct 1/7 of the amount over \$300 from each of you. If you have any questions, please call me. To those of you who sent kind words, George and I are truly grateful. Letters like those are the best reward for lawyering. Cecelia should receive Signature A-117

Proposal

Selfement Fund (252,100)

Total (ccovery (3175,715) * (Legal Flee)

- = amount of 9 to be destricted from Sattlement Time for legal trees.

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| 2 | UNITED STATES DISTRICT COURT | | | |
| 3 | SOUTHERN DISTRICT OF NEW YORK | | | |
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| 5 | SUSAN WAGNER LEISNER, et al., | | | |
| 6 | Plaintiffs, : | | | |
| 7 | -against- : 72 Civ. 2127 | | | |
| 8 | NEW YORK TELEPHONE COMPANY, : | | | |
| 9 | Defendant. : | | | |
| 10 | x | | | |
| 11 | | | | |
| 12 | New York, New York May 17, 1974 - 3:00 p.m. | | | |
| 13 | BEFORE: HON. CONSTANCE BAKER MOTLEY, | | | |
| 14 | District Judge. | | | |
| 15 | APPEARANCES: | | | |
| 16 | RABB, COOPER & RUBEN, Esqs., | | | |
| 17 | Attorneys for Plaintiffs George Cooper and Howard Ruben, | | | |
| 18 | By: HARRIET RABB, Esq., of Counsel. | | | |
| 19 | | | | |
| 20 | WASSERMAN, CHINITZ, GEFFNER & GREEN, Esqs., Attorneys for Plaintiffs Hurwitz, Leisner, | | | |
| 21 | Kirchheimer and Diner, By: KENNETH R. FIELDS, Esq., | | | |
| 22 | of Counsel. | | | |
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MR. FIELDS: Your Honor, I believe I representing the plaintiff in this action just by virtue of the fact --

THE COURT: You are representing one of the origin...
plaintiffs, is that it?

MR. FIELDS: I am representing --

THE COURT: You are Mr. --?

MR. FIELDS: Fields, your Honor. I am representing plaintiff Hurwitz, and essentially I consider myself representing the plaintiff in that we are contesting the allocation of a certain settlement fund that arose out of the litigation in Leisner, et al., v. the New York Telephone Company, and our position is predominantly twofold. The first point is that we are contending that attorney Rabb, who represented the named plaintiffs and the class plaintiffs in the action arbitrarily allocated an excessive sum for legal fees without applying to the Court ---without applying timely to the Court under Rule 11-b.

THE COURT: Without applying what?

MR. FIELDS: We're contending that her application to the Court pursuant to Rule 11-b of the Southern District, Court Rule 11-b, was not timely in that it was made only after she was pressured with the possibility of litigation regarding the distribution. We are saying, in effect, that

her application to this Court with her proposed order which the Court so ordered on March 15th was not timely in that it wasn't made until she realized that there was the possibility of litigation to be brought by Mrs. Hurwitz, one of the named plaintiffs.

THE COURT: Now, what order do you refer to?

MR. FIELDS: I am referring to the order that

was -- the proposed order of distribution that the Court

signed on March 15, 1974 in which the various plaintiffs --

THE COURT: That was based on a preceding order, was it not, consent judgment of September '73, or was it?

MR. FIELDS: No, it wasn't, your Honor.

Under the terms of the settlement agreement -agreement of settlement which was entered into on August 3,
1973, the terms stipulated that the payment -- that New
York Telephone was to pay the plaintiffs and their attorney
the sum of \$52,100. There was no further distribution
in the agreement of settlement.

(Pause.)

THE COURT: Well, Mr. Fields, I see that March 15, 1974 I entered an order approving the distribution to the named plaintiffs as indicated in that order.

MR. FIELDS: Yes, your Honor. That was --

THE COURT: Now, what is, therefore, the motion we are now hearing?

MR. FIELDS: Basically, it was a motion to reconsider that in view of the decision in the City of Detroit v. Grennel, and the case that you cited in your letter of May 8th, Jordan v. Fusari, both of these cases were decided by the Court of Appeals for the Second Circuit and said in effect that, prior to the award of counsel fees, the Court should have an opportunity to hear counsel, and in hearing counsel they would be better qualified to decide what an equitable fee would be.

MS. RABB: Your Honor, may I --

THE COURT: No. I am reading this letter.

(Pause.)

THE COURT: All right, I would hear anything you have to say. You want this reconsidered in the light of the Second Circuit's decision which I noted in my letter. So you may proceed.

MR. FIELDS: Yes, your Monor. Under the terms of the agreement of settlement entered into on August 3, 1973, a fund of \$52,100 was awarded to the named plaintiffs and their attorneys for the New York Telephone Company.

In her letter of December 17, 1973 to the plaintiffs, Attorney Rabb proposed the distribution under

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A-122

which two of the plaintiffs were to receive \$3,000, four of the plaintiffs were to receive \$2,000, one of the plaintiffs was to receive \$1,500, and plaintiff Hurwitz was to receive \$300.

Aside from the counsel's services asked for Richard Leisner, no other counsel fees were mentioned in this letter of December 17th. In addition, the letter of December 17th did not mention at any point the amount of the total settlement fund.

Miss Hurwitz objected to this letter and Miss Rabb thereupon sent another letter to the plaintiffs in which she indicated that Miss Hurwitz objected to the proposed distribution and told them that if they so desired, they could take a certain amount from their own proceeds of this settlement fund, from the share allocated to them, and award the sum to Miss Hurwitz. In effect, she was telling them that they could give money to Miss Hurwitz, but she did not indicate that counsel fees -- she did not -- again she did not indicate the size of the settlement fund nor did she indicate the amount of counsel fees that she was asking for.

In her letter to the Court of February 5, 1974, Miss Rabb indicated that she had heard from the seven other named plaintiffs in this action, and reallocated the

memch funds on the basis of how much they were willing to give 3 up. On the basis of her communications with the plaintiffs, Miss Hurwitz -- Mrs. Hurwitz was then awarded 5 \$600. This letter, your Honor, made no mention of counsel 6 fees and no mention of the total amount of the settlement 8 fund. In the order that was so ordered by the Court, the order of distribution, there is again no mention 10 made of counsel fees and there is no mention of the total 11 settlement fund, and counsel suggests that the order is 12 defective in that it isn't dispositive of the total 13 14 settlement fund. 15 Getting back to the first issue, which is, as we see it, that Miss Rabb allocated an excessive amount for 16 counsel fees for this action, I'd like to cite certain 17 cases that I think are very illuminating. In the 18 Pauline Danna v. Phillips Petroleum Company --19 THE COURT: Well, before you go on to cite 20 cases, I have looked at the settlement agreement itself, 21 which is dated August 3, 1973, and that does refer to the sum, the total sum, does it not? MR. FIELDS: Yes, your Honor. THE COURT: On Page 3.

MR. FIELDS: That was the last time that any of the plaintiffs or the Court was apprised of the total amount of the sum. All correspondence subsequent to that original agreement of settlement mentioned neither the total amount to be allocated to attorneys' fees nor the total amount of the settlement fund.

THE COURT: I see. All right.

So, counsel is contending that, in effect, by omitting the total amount of counsel fees that Miss Rabb was allocating and by omitting the total amount of the settlement fund in subsequent correspondence with the Court and with the named plaintiffs, she was in effect concealing the amount.

MR. FIELDS: At this point, your Honor, before going back to certain issues which I think are very important, I'd like to cite certain cases which I believe are very much in point.

THE COURT: Well, we know the cases in point.

I mentioned them to you in my letter, didn't I?

MR. FIELDS: Well, in addition, your Honor, there are certain cases which I cited in my brief that I think are very important for the Court to regard at this juncture, because they involved similar relief to the relief awarded in this action, and they also involve sex

discrimination under Title 7, the Civil Rights Act of

And I think that they also answer certain questions that were raised in this affidavit from Miss Rabb that I received, and Mr. Cooper that I received about five minutes before 3:00 this afternoon.

THE COURT: All right.

MR. FIELDS: In the case of Pauline Danna v.

Phillips Petroleum Company, 3 EPD 1836, this was a case before the United States District Court for the Western District of Texas. It was decided in 1970. It was a sex discrimination case under the Civil Rights Act of 1964. In that case, the plaintiff was awarded \$16,875. The Court also awarded what it considered to be reasonable attorney fees in the sum of \$2,500. In this case, the Court also enjoined discrimination against the plaintiff and other females similarly situated.

In the case of Shirley Lee, et al., vs. Cohen Mills Corporation, cited at 5 EPD 7975, the United States Court of Appeals for the Fourth Circuit decided in 1972 in a Title 7 case that attorney fees of \$10,000 to twelve attorneys was not excessive -- correction, your Honor, was not too low. In this case, the attorneys were alleging that the award was too low.

Airlines, 5 EPD 8432, the United States District Court for the Western District of Missouri decided in 1971 that an award of \$1,500 was reasonable attorney fees in a civil rights action under the Civil Rights Act of 1964. This fee of \$1,500 was considered adequate for the preparation and the trail of a suit by a female airline mechanic to remedy an airline's discriminatory policy of setting limits on overtime for women but not for men.

I might add that in the instant case, the case was settled prior to trial.

In the case of Courtesy Chevrolet, Inc. v.

Tennessee Walking Horse Breeders & Exhibitors Association,

393 Fed.2d 75, the Court of Appeals for the Ninth Circuit
held that \$10,000 was a reasonable attorney's fee in a

complicated anti-trust case. In that matter, the attorneys
expended a total of 2,289 hours. I noticed in the
affidavit, which I just had a chance to glance at that in
the instant case, counsel is billing on the basis of 749-1/2
hours, plus an additional proposed 40 hours that counsel
feels she will have to expend in the future.

Another case, Lindy Bros. Builders, Inc., Philadelphia, et al., v. American Radiator and Standard Sanitary Corporation, 341 Fed.Sup. 1077 was a case decided

by the U.S. District Court for the Eastern District of
Pennsylvania in 1972. It was a complicated, multi-District
plumbing fixture anti-trust action. It was brought as
a class action under Rule 23 of the Pederal Rules of Civil
Procedure. In that case, the Court deemed the award of
one-third of the fund as excessive for counsel fees.
The Court said that no other case cited permitted so high
a percentage. In fact, the Court also found that 25
percent was the highest amount allowed in any of the cited
cases, and that in many instances the award was much less.

In the instant case, the sum of \$36,300 represents 69.6 percent of the settlement fund of \$52,100.

Plaintiff Hurwitz contends that Miss Rabb misrepresented her position to the Court and to the other
plaintiffs in trying to arrive at a distribution of the
settlement fund. In her letter of January 10, 1974, in
which Miss Rabb indicated that Mrs. Hurwitz was not
satisfied with her proposed allocation from the settlement
fund, Miss Rabb said that Mrs. Hurwitz wanted \$1,000.

In her affidavit that accompanied my brief, as Exhibit F, Miss Hurwitz says that "Your deponent never told Miss Rabb that she would accept \$1,000 in full settlement of her claim, but rather indicated to Miss Rabb your deponent felt she should receive at least that amount."

By saying Miss Hurwitz wanted \$1,000, Miss Rabb was in effect putting a limit in the other named plaintiffs' minds on how much Miss Hurwitz should get.

Miss Rabb indicated in her affidavit to the Court that also accompanied my brief as Exhibit D that she arrived at the proposed distribution after consulting with one of the plaintiffs with whom she had regularly consulted throughout the course of the litigation.

When I spoke to Miss Rabb prior to sending a letter to the Court asking for an opportunity to be heard regarding this distribution, Miss Rabb told me that she had spoken with most of the plaintiffs in this action.

that it seems to me that with respect to your motion for reconsideration that there are two separate problems.

One is the amount allocated to your client of \$600, and the other, I thought you said, involved attorneys' fees.

Is that right?

MR. FIELDS: Yes, your Honor.

THE COURT: Now as to the \$600, Miss Rabb submitted the matter to the Court for sattlement since the clients could not agree among themselves with respect to that, and the Court approved the settlement to your client, or the allocation of \$600 to your client, based on the

material before the Court at that time, and the rest of this money was distributed as indicated in Exhibit A, which shows only \$3,000 to Richard Leisner for counsel fees, and the remainder to be added to a law school fund for the purpose of funding other litigation efforts by our seminar, as the letter says here. It is the Employment Rights Project, I guess Columbia University. So that we have to talk to the facts of this case, which indicates a counsel fee of \$3,000 but a payment to a special fund to finance similar litigation.

Isn't that right?

MR. FIELDS: Your Honor, I don't think that makes any difference.

When the plaintiffs went to an attorney, they went to an attorney; they did not go to the Columbia University or any law project or legal project under its auspices.

They went as plaintiffs seeking professional legal advice.

I don't think that the disposition --

THE COURT: From the beginning the lawyers represented themselves as lawyers for this particular fund, I guess -- I expect with the exception of Mr. Leisner who was the husband of one of the plaintiffs, and the fee, counsel fee of \$3,000 was paid to him; the remainder went to the organization which represented or supplied

the other legal talent for the case.

Well, anyway, let's take these then separately.

Let's start with the amount awarded to your plaintiff.

You say she should have been awarded more? If so, how much more?

MR. FIELDS: I believe -- you see, at this point it's hard for me to say how much more, because I think all of these things tie in. I think that by arbitrarily asking for the sum of \$36,300 for counsel fees, I believe that Miss Rabb compromised the rights of not only my plaintiff but of all the eight named plaintiffs, and this in effect is the position that I took in my brief.

You said that the order that was signed on March 15th was made with the information that was available to the Court. With all due respect, your Honor, there are certain things that came out subsequent to that that I think are relevant. Miss Rabb indicated that the distribution was made on the basis of risk, burden and advisability. At that point, prior to March 15th, she did not indicate what risk each plaintiff underwent, what burden they had to sustain, and what was their advisability. All she said was that Mrs. Hurwitz had left the employ of the phone company. She did not indicate that any of the other plaintiffs had also left the phone company. In fact,

today is the first time that I saw any indication that the other plaintiffs did leave the phone company, and that appears in Miss Rabb's affidavit today on Page 8, where she indicates that four plaintiffs have left the phone company.

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Now, it would seem to me that it is imperative that if the basis -- if one of the criteria on which this distribution is to be based is the length of service with the company, and apparently Miss Rabb felt that this was the case when she cited the fact that Mrs. Hurwitz was only with the company for one year, it would seem that if she makes this the basis of the distribution, the Court can't make the distribution without knowing how long the other named plaintiffs were with the company.

And now it appears that four of them have, in fact, left.

THE COURT: Well, let me see if I understand what your claim is as to what your client should have received.

Your client is requesting, according to Miss Rabb's affidavit of February 5, 1974, \$1,500. Is that it?

MR. FIELDS: Your Honor, Miss Rabb said that counsel for Mrs. Hurwitz accepted the sum of \$1,500.
As I indicated --

THE COURT: Well --

MR. FIELDS: As I indicated --

THE COURT: Well, it says here plaintiff Murwitz has contacted counsel who now requests that she be allotted \$1,500, and it gives yourname as the attorney and your address and telephone number.

Are you saying this is not correct?

MR. FIELDS: No, your Honor, this is not correct. In my brief, I deal directly with that point where I say on Page 12: "In her affidavit of February 5, 1974 Miss Rabb wrote plaintiff Hurwitz contacted counsel who now requests that she be allotted \$1,500."

And I go on to say that this is an inaccurate statement. The only time counsel for Mrs. Hurwitz discussed possible settlement of the instant action with Miss Rabb was on January 28, 1974. At that time Miss Rabb promised establishing a \$1,000 escrew account to cover Mrs. Hurwitz' possible share of the settlement so that the remainder of the fund can be distributed. Under the terms of that offer, Mrs. Hurwitz was not offered the sum outright. It was to be in an escrew account, your Honor, and Miss Rabb maintained that final settlement would have to be subject to approval of other named plaintiffs.

This offer was rejected by counsel as being inadequate. At that point, your Honor, I had no basis, I had no authority from my plaintiff to settle the case. In fact, I had not even had an opportunity to go down to the District Court to examine the file in this matter.

Your Monor, in the complaint that instituted this action, one of the -- the complaint asked for back pay for the named plaintiffs equal to the difference between the salary paid to men with equal qualifications hired at the same time as plaintiffs, and the salary received by plaintiffs since the beginning of their employment with the company.

Counsel suggests that this is the criterion or at least one of the major criteria that the Court should direct itself to in distributing the fund.

Further, in the complaint the allegation is made that as of December 1971, women entering the company were paid at Salary Grade 5 which, under the New York Telephone Company salary regulations, I guess you might call them -- Salary Grade 5 was a salary of \$11,400. At the same time, as the complaint says, men were being hired at Salary Grade 10. Now Salary Grade 10 involved \$16,800, so the apparent discrepancy in back pay alone for one year, the difference between Salary Grade 10 and Salary Grade 5

is \$5,400.

And counsel suggests that there is certainly a question of propriety with regard to settling a claim of \$5,400 for \$300, which was the original sum allocated to Mrs. Hurwitz.

In fact, when Mrs. Hurwitz objected to her size of the share -- her share of the settlement fund -- Miss Rabb said that it was out of her control and that Mrs. Hurwitz should talk to the other plaintiffs. When I discussed the same thing with Miss Rabb, I was told by Miss Rabb that she deemed that her job was over; if I wanted to question the settlement I should get in touch with the other plaintiffs.

to give me all these out-of-Court conversations. What we are here for is to determine what your claim now is.

And that is that your client should receive more, and that the award made for counsel fees was too great; is that it?

MR. FIELDS: Yes, your Honor.

THE COURT: Now give me the basis for your client getting more so we can get on with this. All this conversation out of Court is not very helpful.

MR. FIELDS: The basis is that my client suffered

loss of back wages of \$5,400 for the one year that she was with the telephone company. There was no distribution on the basis of back wages as per Miss Rabb's affidavit in which she said that the distribution was on the basis of risk, burden and advisability, and I think that this is the criteria to which the Court should address itself, and I think that failing this, we have to fall back on Miss Rabb's representations as to what a person's advisability was, what their burden was, and some other equally subjective criteria which I think is beyond the Court's ken at this point.

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THE COURT: All right, I will hear from Miss Rabb on the first point and also on the counsel fee matter.

MS. RABB: Mr. Fields raised a couple of questions of fact which I think are incorrect and ought to be corrected for the record. He suggested to your Honor that when the plaintiffs first were asked how much money they would accept in settlement of their claims in this case, that they were unaware that there had been a lump-sem distribution to us, both the counsel and the plaintiffs, of \$52,100. But a look at the letter of December 17th, the first one that ever went out to the plaintiffs --

THE COURT: You say September 17th?

MS. RABB: December 17, 1973, which begins, "On

--- in this action, and reallocated the

A-123

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Monday, December 3rd, the attorneys delivered to me" --

MS. RABB: It says again that the enclosed order of the Court -- it says in that first paragraph that there is an order of the Court enclosed and directs the attention of the clients to that order which is enclosed. That order clearly shows, as your Honor suggested earlier, that you signed a decree in September which gave a lump sum of \$52,100 --

THE COURT: When you say, "See the Court's order," what order are you referring to, the September 10th order?

MS. RABB: Yes, your Honor.

THE COURT: The settlement agreement attached.

MS. RABB: Exactly so.

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And that order included the paragraph, of course, that gave to the counsel and to the plaintiffs \$52,100. From the outset, it was clear because they had the order as well as the distribution suggested, that there was \$52,100 in a fund out of which the money was to be taken.

Again, Mr. Fields suggested to you that I didn't tell the Court again that there was a lump sum of \$52,100 and suggested that the Court simply ought to ignore how much money was in a fund, and that I spoke to you only

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SCUARE, NEW YORK, N.Y. CO 7-4580

A-124

about the distribution, but the letter I sent you on February 5th covering the affidavit says in the second sentence, "your order in the above referenced matter is reported at" -- and as you will note, Paragraph 2(a) provides for a lump sum. In short, the matter of the lump sum and the amount that was in it was neither kept from the plaintiffs, who got a copy, not just of the lump sum or some statement that there was a fund, but they got a copy of the whole order, and it wasn't withheld from the Court, because this letter which we sent to you, which I think was the first you saw --

THE COURT: Yes, I don't think there is any merit to the suggestion that the lump sum was withheld from the Court. It is plainly set forth in the order, as I said, at the top of Page 3 of the settlement agreement. It says that a lump sum will be given.

Let's pass to the next point.

MS. RABB: The next question Mr. Fields raises was whether the abstract, the counsel got 67 percent of the fee -- of the entire money settlement in this case. A fund of \$52,100 had been established by the settlement. He then reads from a number of cases in which \$10,000 was too low, \$5,000 was adequate, but I think that's the kind of thing to which your Honor asked us to address

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SCHARE, NEW YORK, N.Y. GO 7-4580

A-125

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| | ourselves | today in Court. | |
| | | T# 3000014 30 000 000 | |

It doesn't do any good to grade high-low figures about counsel fees. \$350,000, that was okay in Robinson v. Lombard. What we have done for your Honor and given to Mr. Fields was an affidavit describing the time spent in this matter, and the City of Detroit v. Grennel -- I'd like to submit that to your Honor, with all the awards and amounts of money.

We gave Mr. Fields a copy of this before the hearing today.

THE COURT: Now, is there set forth somewhere the basis on which each plaintiff received the amount which she did receive?

MS. RABB: That's in the matter of the distribution and that evidence appears in the affidavits which we have sent to you already. These --

THE COURT: Which affidavics, specifically?

MS. RABB: My affidavit of February 5th and the attached correspondence refers to the distribution among the plaintiffs. The affidavit that we just handed to you are about the fees.

THE COURT: Well, I am asking whether in addition to your affidavit of February 5th is there somewhere else where it is indicated, the basis on which each plaintiff

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A-126

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was awarded his or her -- well, her amount.

MS. RABB: The fact is that Mr. Fields asked it be addressed -- or addressed not in the affidavit, but appear in the record. For example, Mr. Fields says it's not clear how long anyone else worked for the telephone company; so if length of service is to be an issue, which it clearly was and which it says in my affidavit that you are looking at on February 5th, Paragraph 5 of the affidavit, which sets forth among the factors that went into the low allocation to Miss Hurwitz as compared to the others, that she had been there for only one year. Now the records in this case indicate --

THE COURT: Let me say this, Miss Rabb. I think the simplest way for you to do this is to set forth in another affidavit any factors not shown in this February affidavit or, more specifically, the basis on which each award was made to the plaintiffs.

MS. RABB: Would it be helpful, your Honor, if instead of doing an affidavit I just took the stand and testified about some further information here today, or would you prefer it in an affidavit?

THE COURT: Well, yes, I think that would be more expeditious, and then we can have a further hearing after

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A-127

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| 2, | I have considered the affidavit regarding the fee and |
| 3 | the affidavit regarding the basis on which each award |
| 4 | was made, because I think the February 5th affidavit |
| 5 | is not that explicit. |
| 6 | It simply says: "I distributed a second proposal |
| 7 | to all the plaintiffs and all the plaintiffs wrote back |
| 8 | suggesting the following amounts for plaintiff Hurwitz," |
| 9 | but it doesn't clearly spell out the basis on which each |
| 10 | plaintiff received her award, that is, how long that |
| 11 | plaintiff worked for the telephone company. |
| 12 | MS. RABB: I can give you that (formation now |
| 13 | if you'd like it. |
| 14 | THE COURT: Well, I'd rather recess now and take |
| 15 | it on Monday, if necessary. |
| 16 | Well, suppose we recess, then, until 3:30 on |
| 17 | Monday, and bring in an affidavit setting forth more |
| 18 | specifically the basis on which each award was made. |
| 19 | MS. RABB: All right. |
| 20 | THE COURT: We continue the hearing then, and |
| 21 | that will give me time to consider the affidavit regarding |
| 22 | the fee. |
| 23 | (Adjournment taken to Monday, May 20, 1974 at |
| 4 | 3:00 p.m.) |

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A-128

| 1 | UNITED STATES DISTRICT COURT |
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| 2 | SOUTHERN DISTRICT OF NEW YORK |
| 3 | x |
| 4 | SUSAN WAGNER LEISNER, at al., : |
| 5 | Plaintiffs, : |
| 6 | VS. : 72 Civ 2127 |
| 7 | NEW YORK TELEPHONE COMPANY : |
| 8 | : |
| 9 | May 20, 1974 3:45 p.m. |
| 10 | Before: HON. CONSTANCE BAKER MOTLEY, |
| 11 | District Judge |
| 12 | |
| 13 | APPEARANCES |
| 14 | HARRIET RABB, ESQ. GEORGE COOPER, ESQ. and |
| 15 | HAROLD RUBIN, ESQ. |
| 16 | Attorneys for Leisner and others. |
| 17 | |
| 18 | WASSERMAN, CHINITZ, GEFFNER & GREEN, ESQS. |
| 19 | Attorneys for Plaintiff Hurwitz |
| 20 | BY: KENNETH R. FIELDS, ESQ. |
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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4550

A-129

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| 2 | THE COURT: All right, Mr. Fields, have you had a |
| 3 | chance to read the latest affidavit? |
| 4 | . MR. FIELDS: I didn't have a chance to read all the |
| 5 | exhibits annexed to it, but I did read the affidavit. I did |
| 6 | not have a chance to review it in any depth, but I do have a |
| 7 | few comments I would like to make to the Court. |
| . 8 | THE COURT: Let me say this: I would rather have |
| 9 | you make those in writing and give yourself a chance to look |
| 10 | at the affidavit and exhibits and comment on them in writing, |
| 11 | and the same with respect to the affidavit received on Friday |
| 12 | regarding counsel fees. |
| 13 | Now, if you have anything in addition, however, I |
| 14 | will hear that now. |
| 15 | MR. FIELDS: I do, your Honor. |
| 16 | I think I have substantially reviewed the affidavit |
| 17 | of Friday, and I have comments on that, and I believe the |
| 18 | same comments are applicable to the new affidavit of today. |
| 19 | I also have a proposal which I think might help the |
| 20 | Court in its determination of this matter, and there are other |
| 21 . | facts pertinent to all of this that I would |
| 22 | THE COURT: Let me ask you this: do you have any- |
| 23 | thing other than comments? |
| 24 | MR. FIELDS: No, I have nothing written, your Honor, |

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

except for this proposal which I think, in view of my comments,

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A-130

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| 2 | would aid the Court in this matter. |
| 3 | THE COURT: All right, I will hear it. |
| 4 | MR. FIELDS: I will give you this (indicating) and |
| 5 | would also like to address myself to a couple of things which |
| 6 | the Court inquired about on Friday. |
| 7 | THE COURT: Well now, this paper you have handed up |
| 8 | it is not clear to me what it is. |
| 9 | MR. FIELDS: Your Honor, that is why I would like t |
| 10 | make my comments. |
| 11 | THE COURT: All right. |
| 12 | MR. FIELDS: Before I begin, I would like to addres |
| 13 | myself to the matter of Columbia Law School establishing a |
| 14 | fund for the benefit of future litigation of employment right. |
| 15 | cases, as Miss Rabb said she would do in her letter of 12/17/ |
| 16 | to the plaintiffs. It was attached to my memorandum as Exhibi |
| 17 | A. |
| 18 | In this context, I would like to direct the Court's |
| 9 | attention that before the plaintiffs, the named plaintiffs, |
| .0 | went to the employment rights project, they sought private |
| 1 | counsel, Mr. Richard Leisner. |
| 2 | Mr. Leisner felt that his background and experience |
| 3 | was inadequate to successfully meet the task, and he sought |
| 4 | the aid of Miss Rabb and the employment rights project. |
| | 128.00 510,000. |

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Further, on page 4 of the affidavit, Miss Rabb's

outer plainteres had also left the phone company. In fact,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A-131

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| 2 | affidavit of Friday, at paragraph 8, Miss Rabb wrote: |
| 3 | "Counsel undertook to represent plaintiffs and the |
| 4 | class of all women similarly situated without any agreement a |
| 5 | to fee to be paid by plaintiffs." |
| 6 | I am suggesting at this point that the only basis |
| 7 | on which the Court can award legal fees would be on the basis |
| 8 | of quantum meruit and not on the basis that a fund was going |
| 9 | to be established for the law school. |
| 10 | Furthermore, under the statute, the Civil Rights Ac |
| 11 | of 1964, 42 U.S.C. Section 2000(e)(5)(k), there is a provisio |
| 12 | for attorneys fees and costs. So that if Miss Rabb is |
| 13 . | talking in terms of funding future litigation, what is needed |
| 14 | in effect, is seed money. The seed money I refer to would be |
| 15 | the amount necessary for costs, which in this case was \$905.2 |
| 16 | as appears in Miss Rabb's affidavit of Friday, page 10, para- |
| 17 | graph 15. |
| 18 | Furthermore, if the plaintiffs desire that they wan |
| 19 | to contribute to such fund after they get their equitable sha |
| 20 | of the proceeds, I feel they have this alternative available |
| 21 | to them, and, in addition, they will get the tex benefits for |
| 22 | their contribution. |
| 23 | Now, with regard to the distribution, in Miss Rabb's |
| 24 | affidavit of Friday, paragraph 12a, she indicates that four |

plaintiffs left the company, and she indicates the time that

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SOUTHERN DISTRICT COURT REPORTERS, U.S..COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A-132

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the four plaintiffs that left the company were with the defen-

the four plaintiffs that left the company were with the defendant. Yet, however, she does not indicate how much of this time was prior to August 3, 1973, which was the date of the settlement, and I am suggesting that all damages reflect back to back pay prior to that date and not subsequent.

In fact, in the affidavit that the Court received today, on page 2, the length of service that all of the named plaintiffs that were with the company, yet we don't know how much of this occurred after August 3, 1973; and I think in view of the fact that the settlement related to a time period prior to August 3, 1973, this is no help in advising the Court.

THE COURT: I don't know as I follow it.

MR. FIELDS: What I am suggesting, your Honor, is that the settlement reflected everything that had gone on up until the date of the settlement. So that in deciding what equitably should be anyone's share, the only way the Court could decide as of that moment was to look back to the employment history of the named plaintiffs prior to August 3, 1973. To permit otherwise would suggest that a plaintiff who goes on and collects a pension with the company and works 20 years could then say on the basis of that that their share should be greater.

Furthermore, in here memo -THE COURT: I think , as I indicated, Mr. Fields, I

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SCUARE, NEW YORK, N.Y. CO 7-4580

A-133

| | 2 | think your cause would be better served and your clients, if |
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| | 3 | you would take the time to write out your legal arguments with |
| | 4 | respect to the award of counsel fees made here and distribution |
| | 5 | to the plaintiffs. |
| | 6 | Now, you have just received the affidavit, and you |
| | 7 | said you haven't had a chance to read the attachments |
| | 8 | MR. FIELDS: I have not seen enough, your Honor |
| | 9 | THE COURT: and what is contemplated is that you |
| | 10 | may want to ask some questions about these things, one so you |
| pelt 2 | 11 | have had a chance to study it, in addition to filing something |
| | 12 | in writing with respect to your claim. |
| | 13 | You have not filed any brief thus far, have you? |
| | 14 | MR. FIELDS: Yes, I have, your Honor. |
| | 15 | THE COURT: Well, that was before we got these affi- |
| | 16 | davits, wasn't it? |
| | 17 | MR. FIELDS: Yes it was, your Honor. |
| | 18 | THE COURT: That is what I mean. |
| | 19 | Now that you have these two affidavits which set |
| | 20 | forth the facts, you have some basis on which to proceed now |
| | 21 | MR. FIELDS: But your Honor, I would |
| | 22 | THE COURT: and I think the thing to do is to read |
| | 23 | those affidavits and see if there are any disputed issues of |
| | 24 | fact that we ought to hear, or any evidence that you want to |
| | 25 | offer before we close out this hearing. |
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the difference between Salary Grade 10 and Salary Grade 5

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4550

A-134

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| 2 | MR. FIELDS: Your Honor, I believe that if I were |
| 3 | permitted to proceed I could lead into the justification for |
| 4 | the settlement which I gave the Court, the proposal that I |
| 5 | gave the Court the copy of, and I think we might be able to |
| 6 | resolve that this afternoon. |
| 7 | I don't think the rest will take that terribly long |
| 8 | THE COURT: All right. |
| 9 | MR. FIELDS: In our memorandum to the Court Miss |
| 10 | Rabb on page 4 said regarding the \$600 that was to be paid to |
| 11 | Mrs. Hurwitz: that amount should be adequate to compensate he |
| 12 | for filing her EEOC charge against the company. |
| 13 | Now, I suggest that this is an improper theory of |
| 14 | damages in view of the fact that on page 8 of the complaint, |
| 15 | the plaintiffs ask for back pay for named plaintiffs equal to |
| 16 | the difference between salary paid to men with equal qualifi- |
| 17 | cations hired at the same time as plaintiffs and the salary |
| 18 | received by plaintiffs since the beginning of their employmen |
| 19 | with the company. |
| 20 | And as I pointed out on Friday, this difference with |
| 21 | regard to the back pay issue for Mrs. Hurwitz is over \$5,400. |
| 22 | THE COURT: You say she is entitled to back pay of |
| 23 | over \$5,000? |
| 31 | MR. FIELDS: Yes, your Honor, or a proportion |

THE COURT: Well, our problem here is that there was

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A-135

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| 2 | award here of back pay, was there, to any of these plaintiffs; |
| 3 | there was an award of a lump sum. |
| 4 | . MR. FIELDS: That is right, but I am suggesting that |
| 5 | the lump sum bears some relation to the damages sued for in |
| 6 | the complaint, and one of those damages, and probably the most |
| 7 | significant of those damages, was back pay, the difference tha |
| 8 | these women sufferred relative to men who were employed with |
| 9 | equal qualifications at the same time. |
| 10 | On page 5 of Miss Rabb's memo, she indicates that on |
| 11 | of the reasons this is the original memorandum she submitte |
| 12 | she indicated that Mrs. Hurwitz's pension in this matter |
| 13 | was minimal. |
| 14 | Now, I am suggesting that however minimal Mrs. |
| 15 | Hurwitz's participation was, it was not geared to Mrs. Hurwitz |
| 16 | unavailability to testify or unavailability to help the Court |
| 17 | or her counsel in any way. This minimal participation, if, in |
| 18 | fact, it was minimal, was due to the fact that Miss Rabb did |
| 19 | not ask Mrs. Hurwitz to participate more actively, this being |
| 20 | asked of Mrs. Hurwitz indicated that she would have been avail- |
| 21 | able to testify and help in any way that Miss Rabb deemed fit. |
| 23 | On page 11, paragraph 15 on her affidavit that was |
| 24 | submitted on Friday, Miss Rabb writes: |
| 25 | "Counsel sought \$36,300 which defendant paid without |
| | issue." |

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A-136

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Now, I am suggesting that this is an inaccurate reflection of the facts in view of the fact that the Court was not apprised according to Rule 11(b) of the Court of the sum that counsel was asking until, significantly after the estab-

lishment of the agreement of settlement on August 3, 1973.

The agreement of settlement said merely within ten days following the date this agreement takes effect the companshall pay the plaintiffs and their attorney the sum of \$52,100 in the form of a check payable to the order of Harriet Rabb as attorney. It wasn't until much later that Miss Rabb did apply to the Court for her fee.

At this point, your Honor, I would like to address the Court's attention to my proposal which I believe is equitable to all of the plaintiffs involved in this action.

My first point with respect to this proposal is that the legal fees ultimately to be paid to counsel should not just come out of that fund that was established for the named plaintiffs, but also out of the fund that was established, or the future remunerations that the class plaintiffs would enjoy.

They received benefits, the class plaintiffs received benefits, and it is incumbent upon them to pay their fair share of the legal fees for creating those benefits. They were invited to join as named plaintiffs, and they declined. They should not hereafter be put in a position where they get

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4550

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something for nothing, but I think they should pay their fee, their proportionate share of the legal fees.

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As authority for the sold monor, I am directing the Court's attention to Jordan vs. Fusari, docket number 73-2364, which was decided on April 29, 1974, and was cited by the Court in its letter to me of 5/18/74.

In that case the Court approved the theory that in a class action the plaintiffs always had created or would create a fund benefitting a whole class, and the Court found that it was from that whole fund from which it was just to compensate attorneys, not just the named plaintiffs, but also the fund that was ultimately to go to the class plaintiffs.

Now, under the terms of the agreement of settlement, those \$52,100 was to be paid to the named plaintiffs and their attorney. An additional \$125,960 was what Miss Rabb in her affidavit of Friday on page 10 suggested was a conservative estimate of the future benefits to be enjoyed by the class plaintiffs in this action.

The total amount of recovery, as Miss Rabb saw it in her conservative estimate was \$173,745 --

THE COURT: Benefits to the class how?

MR. FIELDS: Let me direct the Court's attention to page 10 of Miss Rabb's affidavit of Friday, at the top, your Honor:

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. GO 7-4555

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"Even so, the monetary recovery in this case is substantial. "Based on the estimates in the previous paragraphs, the named and unnamed palintiffs would recover \$173,745."

The total figure is \$173,745.

Now, that being the case, and in view of Jordan vs. Fusari, I think it is incumbent upon all the class plaintiffs to pay their share of the legal fees. I don't think the total amount of legal fees should come out of the settlement fund of \$52,100 but, rather, it should come from the total figure of \$173,745, which figure, as I would like to reiterate, Perlects the conservative estimate of Miss Rabb.

In that context I have prepared --

THE COURT: Is that an immediate recovery?

MR. FIELDS: No, your Honor, but in Jordan VS. Fusari a recovery was not immediate either and the Court of Appeals for the Second Circuit apparently felt that it was justified.

THE COURT: All right.

MR. FIELDS: Furthermore, your Honor, at this point I would like to ask the Court for attorney's fees for myself and my office for \$2500 which reflects 46 hours - five hours to inspect the file, 33 preparing the brief; 8 for preparing for the hearings plus additional time spent in these hearings; and I cite as authority for the Court's awarding a fee a case that was also cited by the Court in its letter May 8, 1974.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CQ 7-4550

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SCHARE, NEW YORK, N.Y. CO 7-4580

A-139

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| 2 | I would like to cite City of Detroit vs. Grennell, |
| 3 | docket number 73-2111, 73-1420 which was decided by the Secon |
| 4 | Circuit Court of Appeals on March 13, 1974. |
| 5 | In that case the Second Circuit Court of Appeals re- |
| 6 | cognized that under the equity jurisdiction of the Federal |
| 7 | Courts claims may be filed not only by a party to the litigat |
| 8 | but also by an attorney whose actions conferred a benefit upor |
| 9 | a given group or class of litigants; and at this point I am |
| 10 | suggesting that additional benefits will be conferred depending |
| 11 | of course, on your Honor's decision in this matter, on the |
| 12 | named plaintiffs, when their fair share of legal fund is allo- |
| 13 | cated to them, and the remainder, I am suggesting, should be |
| 14 | paid by the class plaintiffs, and I am citing that |
| 15 | THE COURT: What does that come out to an hour? |
| 16 | MR. FIELDS: An hour? It comes out to less than |
| 17 | \$52 an hour. |
| 8. | THE COURT: How much less? |
| 9 | MR. FIELDS: Well, your Honor, I figured it on the |
| :0 | basis it comes out to and this is excluding time spent |
| 1 | in Court, your Honor it comes to \$54.34 an hour. |
| 2 | THE COURT: It comes to what an hour? |
| 3 | MR. FIELDS: Oh, I am sorry. \$54.34 an hour, but |
| 4 | that figure will be deflated by the amount of time spent in |

this courtroom. This figure does not reflect time spent at

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y CO 7-4580

A-140

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| 2 | these hearings on Friday and today. |
| 3 | THE COURT: What would you say your time spent in |
| 4 | the courtroom is worth per hour? |
| ā | MR. FIELDS: Well, going according to what Miss |
| 6 | Rabb feels her time is worth and she suggested her time was |
| 7 | worth a hundred dollars an hour - I cannot see where my time |
| 8 | would be worth less than that. |
| 9 | THE COURT: So you agree, then, that in a case like |
| 0 | this, time spent by lawyers in Court is worth a hundred dollar |
| 1 | an hour? |
| 2 | MR. FIELDS: I am suggesting that my time is equal |
| 3 | in value to the time that Miss Rabb spent. I think my time |
| 4 | is equal in value to Miss Rabb's time, yes, your Honor. |
| 5 | THE COURT: Well, all I am getting at is whether a |
| â | hundred dollars an hour is a going rate for this kind of case. |
| 7 | MR. FIELDS: Well, your Honor, I am certain that |
| 6 | whatever the Court decides to award would be satisfactory for |
|) | me. I am just going along with the guidelines that Miss Rabb |
|) | indicated. |
| | THE COURT: Well, just glancing at this affidavit of |
| | Miss Rabb again, she has on here hours which look about 750 |
| | hours for all counsel in this case; is that it? |
| | MR. FIELDS: Yes, your Honor. |
| | THE COURT: And if coursel in this |

A-141

| - | matery \$50 dollars an hour for 750 hours, how much does that |
|----------|--|
| 3 | come out to? \$37,000? Is my arithmetic right? |
| 4 | MR. FIELDS: Yes, your Honor, \$37,000. |
| 5 | THE COURT: And how much did they get in this case? |
| 6 | MR. FIELDS: A total recovery according to Miss |
| 7 | Rabb's estimate, \$173,745 |
| 8 | THE COURT: No. How much did the lawyers get here? |
| 9 | MR. FIELDS: Miss Rabb proposed \$36,300, I believe |
| 10 | for attorney's fees. |
| 11 | THE COURT: So they would be getting on the average |
| 12 | less than \$50 an hour? |
| 13 | MR. FIELDS: Your Honor, the hours involved include |
| | the work by people who have not graduated at least one |
| 15 18 | person who had not graduated from law school. There were |
| 17 | people that were recent graduates from law school. I graduate |
| 18 | from law school in 1968 and I have been practicing for approxi |
| 19 | mately four years now. |
| 20 | THE COURT: All right. Do you have anything else? |
| 21 | MR. FIELDS: Yes, your Honor. |
| 22 | With regard to the affidavit that I received today, |
| 23 | I still don't understand how on the basis of this such definit |
| 24 | sums of money could be arrived at. |
| | I am contending that the criteria that Miss Rabb |

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employed are very subjective and are not as objective as my

A-142

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proposal to the Court.

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She suggests that the other plaintiffs were exposed to the risk but that their employment would not -- were exposed to the risk that their employment would be adversely affected by the plaintiffs status. I am suggesting that at the moment the action was instituted the Court was, in effect, protecting their interests.

She said that others were actively involved.

I directed my remarks to that already, that Mrs.

Hurwitz was available to be actively involved, but she wasn't called upon, and the course of the litigation was under Miss Rabb's control.

She said also that plaintiffs risked unfavorable ratings, on page 4, paragraph 8.

I am suggesting that Mrs. Hurwitz also risked unfavorable ratings. In fact, Mrs. Hurwitz has dubsequently applied for employment with another large corporation in the City, and her application was turned down.

Now, I don't know what the reasons were, but I think if we are going to speculate on one side we might as well speculate on the other side.

I do think, however, that this is a rather subjective criteria, and I don't think that the Court should use it.

Now, while Miss Rabb indigated in her affidavit that

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y CO 7-4560 except for this proposal which I think, in view of my comments,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4550

A-143

certain of the plaintiffs were harrassed.

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Mrs. Hurwitz was also harrassed by her supervisor in the company. In fact, according to the affidavit of Friday, letters were sent to the RECC regarding plaintiffs Principe and Milkman, and these letters were regarding harrassment of the plaintiffs.

Now, neither plaintiff Principe nor Milkman were the ones who received the most money in this action.

Also, in closing, on page 7, paragraph 12, of today's affidavit, Miss Rabb indicated that Mrs. Hurwitz is the only member of the entire plaintiff class to object to the Court's decree in this matter; and I would like to read her letter, a portion of a letter that Mrs. Murwitz received from plaintiff Karen Melanowski, who is also involved in this litigation, and the pertinent sections say -- and this letter was with regard to how much plaintiff Melanowski decided Mrs. Hurwitz should receive -- "in comparison to the total amount of the settlement. your share is extremely small. In fact the amount being distributed among the plaintiffs is small in comparison to the whole. I would support your efforts to obtain more money, especially if it is not being taken from us, the other plaintiffs. If the money must come from the other plaintiffs, "-there is something I can't make out -- " then I feel that 750 is a more equitable amount than what was originally allocated.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y., CO 7-4550

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A-144

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And she goes on to say: "I did tell Harriet, however -- Harriet being Miss Rabb -- "that I would go along with whatever the decision is mainly because I don't want to have my own money held up any more than is necessary."

And I am suggesting that if the other plaintiffs were informed as to all the possibilities involved, that they may not have gone along with the proposed settlement as they have.

Thank you, your Honor.

THE COURT: All right, you may reply, Miss Rabb.

MISS RABB: I think the basic problem here flows
from the fact that Mr. Fields has assumed all along that Mrs.
Hurwitz, if she had stayed with the company and been involved
with this case, would have received back pay, and that Mrs.
Hurwitz or anybody else in this case would have received
back pay either as a matter of the decree that you signed,
your Honor, of the 15th of September or as a matter of the
order that you signed regarding distribution in March.

I think it is clear from the affidavits that were filed today that your Honor signed a decree which had very vigorous goals and timetables as to the hiring, training, promotion, upgrading, front pay for some of the plaintiffs who were noticeably identifiable victims of discrimination who remained with the company, but the decree that your Honor

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4550

plaintiffs left the company, and she indicates the time that

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4550

A-145

tiffs nor any member of the class.

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| 4 | So any request of this Court based on some theory |
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| 5 | involving an entitlement to back pay can't be heard unless Mr. |
| 6 | Fields is arguing that the Court abused its discretion in |
| 7 | signing a decree which did not provide for back pay. |
| 8 | Now, I take it when the decree was presented the |
| S | Court had the jurisdiction to determine whether it was equitab |
| 10 | That is what Judge Lasker decided; that is what the Third |
| 11 | Circuit decided, and unless Mr. Fields is arguing that the |
| 12 | Court abused its discretion in not awarding back pay to any . |
| 13 | members of the class, named or otherwise and I don't think |
| 14 | he has argued that either today or on any of his preceding |
| 15 | papers then there is no issue of back pay in this case. |

signed gave back pay to nobody, not to any of the named plain-

It should also be clear, I believe, that had Mrs.

Hurwitz not had her name on the complaints when it was filed
in the Federal Court she would have received absolutely nothing
from this lawsuit.

A person in the position of Mrs. Hurwitz who had left the company at any time during the litigation and who was not there at the time the decree was signed in September, would have received not only no back pay but no other benefits at all, no front pay, no increases, no promotions, and so forth.

THE COURT: What is front pay?

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4550 *

A-146

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MISS RABB: Front pay was the schedule of pay that your Honor granted to those who had been there since 1968 that had been held at a salary grade level 5, and had about \$1100 added to that salary as per the decree.

If you had been there since 1969 you would have had a thousand dollars added. Persons who were at the company had that increment to their salary. I have called it front pay, but it was truly a salary increment based upon their date of hire. But anyone hired in those years who had left the company --

THE COURT: That was part of the negotiated settlement figure, is that correct?

MISS RABB: Exactly, and it was signed without any provision at all for back pay.

As to the question of damages, then, and when someone left the company and how long they had worked and how much entitlement to back pay, as Mr. Fields put it, I think the record will show damages should reflect their right to back pay as of a certain date. The quibble is not as to the date. The question is whether anybody got back pay, and as I have said, no one did, not just Mrs., Murwitz. No one did.

The question as to the date, if yoru Honor will look again at the paragraphs in the affidavit filed today describing the length of service of the plaintiffs, the length of service

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4550

A-147

funs through the date of distribution of the money, but your Honor can look at it again and subtract back to find that no one who left the company before the lawsuit started -- and certainly no one left the company in 14 months -- and as your Honor can see, the people who are still employed by the telephone company or an operating company at the date of distribution obviously have a greater tenure, but none of them had only 14 months of tenure even when the decree was signed in September, much less when the distribution was made.

In short, no one left the company before this lawsuit started except Mrs. Hurwitz, and the next person to leave
was one who left under very questionable circumstances. She
alleged, and I hope the evidence will support her allegations,
that she left because she had been harrassed out of her job.

There has been no evidence like that about Mrs. Hurwitz.

As to the question of whether she was ready, willing and able to help, nobody has disputed that. Presumably, Mrs. Hurwitz was prepared to give assistance, and it wasn't that anybody didn't want her assistance; it was because she left the company before the suit started that her assistance was unavailing. The kind of information that we needed to know to direct the lawsuit was, what is happening with the training programs? Who is being put into them? In what respect were

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A-148

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they altered from the training programs that were there before:

And in discussing settlement the company had upgraded several hundred operators, for example, and put them in

a salary grade level 23 jump from salary grade level 10 jobs.

Without being able to communicate with them to find out whether that was a meaningful upgrade, whether we should accept that as a part of the settlement. It wasn't that we didn't want Mrs. Hurwitz's cooperation; she wasn't in communication with other people; she had no access to the kind of information that we needed. There wasn't an effort to keep her out of the lawsuit. It was that she had not the information that we needed to help pursue it and to help pursue the settlement.

Pinally, the question of harrassment of the other 'plaintiffs: Mr. Fields has suggested that Mrs. Murwitz's job didn't come through, and he speculates that it may be because of something in the phone company's files and if we are to speculate, we can certainly speculate that that was the case. But there is no speculation about harrassment of the other plaintiffs. And the affidavits and the letters attached to the affidavits will show, the ones that we filed today, and in the letter that Mrs. Hurwitz received from another of the plaintiffs clearly pointed out to her the course of this litigation. All the plaintiffs who remained with the company don't

SOUTHERN DISTRICT COURT REPORTERS, U.S. CQUATHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4555

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A-149

sljt have to speculate about harrassment; they were watched and

they were harrassed, and in the case of two plaintiffs, one of them was ultimately forced to resign because of harrassment and those evenus are very well documented throughout the cours of this hearing and correspondence with counsel and Mrs. Hurwitz at the EEOC.

There is a suggestion here, too, that the other class members should pay in some sense, and thit Mrs. Hurwitz should not be the only one to pay.

As I said again, if Mrs. Hurwi, 's name had not been added to the complaint, the caption in this action, a person in her position, indeed, would not have to pay anything for counsel fees, but neither would she have gotten a nickel, because she left the company voluntarily before the suit was concluded, indeed, in this case, before it began, and she would not have even had any of the benefits of the obtained relief.

Now Mr. Fields suggests that Jordan vs. Fusari is a case that controls here, and that was because a fund of money was created in Jordan out of which dounsel fees were taken, and the Second Circuit ordered on remand that that be reconsidered, and the money not necessarily be reduced from the plaintiff's recovery, and the same sort of thing ought to happen here.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4560

should not hereafter be put in a position where they get

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A-150

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ation. Counsel fees in this case did not come out of any money that any of the plaintiffs were entitled to. Indeed, that paragraph which granes a lump sum to the plaintiffs was one that we negotiated for on behalf of the named plaintiffs simply for the time, trouble, risked harrassment, and so forth that they had undergone. It wasn't a question of pure entitlement, because if it were, they simply would have recovered the other plaintiffs did, the other members of the class under the remainder of the decree. That money was negotiated with the telephone company in settlement under that separate portion of Title 7 which grants counsel fees, not a certain percentage of a recovery, but counsel fees to plaintiffs if-plaintiffs' counsel prevailed.

THE COURT: The entire \$52,000 was negotiated as counsel fees?

MISS RABB: No. We were negotiating for the telephone company for this amount for this plaintiff and that
that
that for that plaintiff, and counsel fees, and the phone
company said, "Just tell us what the total amount is going to
be and we will give you a check for it and you can distribute
it among the plaintiffs. We are not going to argue with you
over this check and that check and the next check. You're
their lawyer. We will give you the check and you distribute

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7:4583

A-151

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the money to the named plaintiffs for whatever special awards you think they are entitled to."

Court here was reluctant to allow money for counsel to come out of a fund that was established for the plaintiffs, was because the law, the Federal law, doesn't allow for unemployment compensation benefits which could be paid to persons who are to receive those benefits to be paid to anybody else, and the question in Jordan was whether there were any separate funcs that the unemployment insurance agency of the state had available from which counsel fees could be drawn, because unemployment compensation benefits could be used for that and only that purpose. This is a completely different sort of situation. The money that came to counsel as counsel fees here, came to us as counsel fees above and beyond what anybody is entitled to under the decree.

And finally -- .

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THE COURT: Well, what I was trying to get clear, was when this \$52,000 sum was negotiated, the telephone company understood or their lawyers, that a part of it was to pay counsel fees in this case; is that right?

MISS RABB: Yes, your Honor. We told them that counsel fees would amount between \$35,000 and \$40,000, and that there would be a sum paid out to the other plaintiffs, more or

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLLY SQUARE, NEW YORK, N Y CO 7-4550

A-165

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CQ 7-4550

A-152

sljt

less on an equal basis with more for those who had sufferred more and less for those who had sufferred less. And that was understood, and the money was given.

Finally, I suppose the next question is where county fees are going to come from for attorney Fields. I don't know that. I don't know where the other \$2500 is that he is asking for for his office comes from. I suppose it comes from the class and would have to be divided up from among them, all the class, everybody who is continuing to get promotions from the named plaintiffs or simply from fees that were provided for my office. I don't know the answer to that.

But I think that posing the question presents the problem, and it seems to me that the money that was given to our office as counsel fees is not seed money to start up litigation. It could have been given to us as individuals, I presume, but we chose not to use it individually but, rather, to take our counsel fees for whatever purposes, whatever counsel chose to do, and in this case counsel fees are fed back into a bank account for the law school to allow further education in public litigation to go ahead.

This is not a case in which the whole recovery was monetary. In fact, a very minor part of the recovery was monetary, and for those benefits, there is no way of adding up the sum, and for the amount that was monetary there was no

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7:4550

A-153

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recovery in terms of back pay, and any measure in this case based on back pay starts with the wrong premise.

And, again, a plaintiff, a class member in the position of Mrs. Murwitz, would not have even been a member of the
class by the time this decree was signed, and so instead of
receiving \$600 she would have received nothing at all but for
the fact that her name was added to the complaint, and she
left the company before the lawsuit started. It is not a
question of fault; there is no claim that she absented herself
when the litigation, or she tried not to be helpful, but this
is simply a question of the realities of what happened throughout the course of it.

THE COURT: Let me ask you this: are there cases cited in your brief indicating, as you say, that in cases of this kind which permit the recovery of counsel fees, those fees could be recovered by the public interest group bringing the suit and used for whatever purpose they desire; is that it?

MISS RABB: Yes, your Honor, the most clearly near analogy being the NAACP defense fund whose right to fees have often been challenged on the grounds that they are a test case organization, and they they received their funds independently from funding sources, and that they are not entitled to counselfees.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 74580

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4585

A - 154

| 1 | sljt 50 |
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| 2 | That argument is frequently made, and I believe in |
| S | almost all the cases we cited in our brief, those cases in |
| 4 | which funds up to \$150,000 which were received in council fee |
| 5 | were received by the Legal Defense Fund to further litigation |
| 6 | efforts in other cases throughout the country. |
| 7 | MR. FIELDS: Your Honor, I would like to just make |
| 8 | a couple of somments here: |
| 9 | First of all, on the issue of back pay, certainly |
| 0 | there were many benefits that were to accrue to the class |
| 1 | plaintiffs but the chira that are are |
| 2 | die apparental beparates the named |
| 3 | reasonable and adoton from one diass plainuitie was the |
| | and I suggest that this |
| | and the second s |
| 3 | THE COURT: Well, I gather that could have been the |
| , | basis for making an award of money to the plaintiffs in this |
| | case. It was not. But let's assume that it was, what would |
| | the total award of back pay have amounted to in this case? |
| | MR. FIELDS: Your Honor, I don't have the figures, |
| | occasion to wast o anoth coady |
| | THE COURT: As for your plaintiff, you said somethin |
| | about \$5,000 is that right? |
| | MR. PIELDS: I am suggesting, your Honor, that my |
| | plaintiff's proportion should bear the same ratio as 5400 plus |

It now turns out that Mrs. Hurwitz was with the company for 14

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4550

A-155

| 2 | months rather than the 12 that I originally calculated. The |
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| 3 | amount that she should get should be proportionate to the |
| 4 | fraction, the enumerator of which is \$5400 plus a sum for thos |
| 5 | two months over the total amount of back pay that all the |
| 6 | named plaintiffs lost. |
| 7 | So what I am suggesting is that if the total back |
| 8 | pay for all the named plaintiffs was, for example, for the |
| 9 | sake of argument, \$50,000, and my plaintiff's sufferred a los: |
| 10 | of back pay in the amount of \$5,000 her proportion should be |
| 11 | \$5,000 over \$50,000; and as I put it in my proposal, this is |
| 12 | after the deduction of a proportionate share of counsel fees |
| 13 | which the settlement fund should bear. |
| 14 | I am also |
| 15 | THE COURT: Which proposes three persent for legal |
| 17 | îees? |
| 18 | MR. PIELDS: No, that .3 represents the fraction of |
| 19 | 52,100 over 173,745 which is the total recovery that Miss |
| 20 | Rabb said this action |
| 21 | THE COURT: What is that in dollars that you propose |
| 22 | for counsel fees? |
| | MR. FIELDS: Your Honor, I can't I am sorry, I |

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7:4581

that you have handed up in dollars for counsel fees? I see

THE COURT: What is your proposal under this paper

don't understand the question?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY STRARE, NEW YORK, N.Y. CO 7-4567

A-156

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.3 in parenthesis.

MR. FIELDS: Your Honor, I am not making such a suggestion. That point here represents the fraction of 52,100 over 173,745, which is the proportion that the settlement fund of 52,100 bears in relationship to the total recovery as Miss Rabb has indicated.

I am suggesting that counsel fees --

THE COURT: Maybe this will clarify it: what do you suggest as counsel fees in this case? What are you suggesting You have \$52,000 a lump sum here. You seem to agree with Miss Rabb that the figure of \$100 an hour in Court in a case like this, and maybe \$50 an hour outside of Court, or whatever this amount here is, is not excessive.

MR. FIELDS: Your Honor I am suggestion that it would be presumptuous of me to tell the Court, advise the Court what counsel fees should be. What I am suggesting here is that this formula which I propose will work after the Court decides what counsel fees should be.

THE COURT: That is what we are trying to decide, what counsel fees should be. Is there something wrong with what Miss Rabb claims ought to be here in terms of dollars per hour?

MR. FIELDS: I think it would be wrong, your Honor, in the total dollar amount that Miss Rabb seeks comes out of

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4550

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is a more equitable amount than what was originally allocated.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y., CO 7-4550

A-157

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| 2 | the \$52,000 fund, but I am not suggesting that her amount is |
| 3 | totally out of line when viewed with regard to the 173,745, |
| 4 | and for that reason I believe that the class plaintiffs should |
| 5 | bear their share of the counsel fees, and, of course, I am |
| В | leaving the determination of what a fair amount of counsel fee |
| 7 | is for the Court's discretion. |
| 8 | THE COURT: Well, it just occurs to me, Mr. Fields, |
| 9 | that in view of the amount of work that must have gone into |
| .0 | this for the plaintiffs, that \$52,000 along would be a very |
| 1 | low figure for counsel fees. |
| 2 | MR. FIELDS: Well, then, if that is the case, your |
| 3 | Honor |
| 4 | THE COURT: We are not dealing with a large amount |
| 5 | of money in view of the kind of case we are talking about and |
| .6 | the kind of work and effort that must have gone into this. So |
| 7 | that unless there is something basically wrong here with the |
| 8 | suggested hourly rate for the number of hours alleged in this |
| 9 | affidavit |
| 0 | MR. FIELDS: Your Honor, I am not suggesting that |
| 1 | relative to the total recovery the counsel fees are that |
| 2 | outrageious, but I am suggesting that relative to the settle- |
| 3 | ment fund of \$52,100, it is outrageious, and I am suggesting |
| 4 | that it be allocated proportionately over the total sum of |
| 5 | 173,000 some odd dollars. |

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY EQUARE, NEW YORK, N.Y. CO 7-4550

A-158

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| 2 | THE COURT: All right. | |
| 3 | Do you have anything else you want to speak on? | |
| 4 | Do you have something else? | |
| 5 | MR. FIELDS: No, your Honor. | |
| 6 | | |
| 7 | THE COURT: All right. Decision reserved. | |
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THE COURT: What is front pay?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4550

1-159

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

SUSAN WAGNER LEISNER, KAREN MALINOWSKI, :
LINDA GEDEON, CEGILIA HUROWITZ, MYROSLAWA :
WANIO, VICTORIA PRINCIPE, MARGARET KECK :
MILKMAN and JANE BOOTH, individually and : on behalf of all other persons similarly situated,

Plaintiffs,

--against--

NEW YORK TELEPHONE COMPANY,

the length of service of the plaintiffs, the length of service

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A-160

TABLE OF CONTENTS

| Preliminary Statement | | | 1 |
|---|------|----|---|
| Point I | | | |
| When an attorney creates or will | | | |
| create a fund benefitting a class, | | | |
| it is equitable that all the class | | | |
| members pay attorney less proportionate | | | |
| to their share of the recovery | | | 3 |
| Point II . | | | |
| Attorney Rabb has not presented the | | | |
| Court with an equitable sasis for | | | |
| distributing the Settlemen Fund | | 9 | |
| Proposal (Conclusion) | | 18 | |
| | | | |
| Schedule | | | |

programs? Who is being put into them? In what respect were

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4560

A-161

Preliminary statement

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This post-hearing memorandum is submitted on benair of decidia Eurowitz, one of the named plaintifis in the above-entitled action. Mrs. Rurowitz was one of eight women employed by the New York Telephone Company in management level positions who brought this class action pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. sec. 2000e et seq. for injunctive relief and damages. The plaintiffs alleged that the defendant Telephone Company discriminates against women employed in management level positions throughout the state in violation of the statute.

prosecute the action. The litigation was concluded with an Agreement of Settlement, dated August 9, 1973, which agreement was adopted as the judgment of the Court. SEPS 8871. One of the terms of the Settlement provided in sub-paragraph II(A):

ment takes effect, the company shall pay to plaintiffs and their attorneys the sum of \$52,100 in the form of a check payable to the order of Harriet Rubb, as attorney.

that is the heart of the instant dispute.

gation. All the plaintiffs who remained with the company don't

SOUTHERN DISTRICT COURT REPORTERS, U.S. CQUATHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A-162

The Court Heard argument on this alspace on may 17,1974 and again on may 20,1974. Assumey has presented the Court with addicavits on each of the aforementationed dates. This post-hearing memorandum is officed in opposition to those addicavits, such to and the Court to distribute, the Settlement Functionality.

Plainter numbers contends that a) when an autorney orestes or will presse a fund beneficting a class, it is equitable that all the class members pay accommove. Take proportionase to their share of the fourtwest b). Attorney made has not presented the Court with an equitable basis for distributing the Settlement fund.

FOIRT I

WHEN AN ATTORNEY CREATES OR WILL CREATE A FUND BENEFITTING A CLASS, IT IS EQUITABLE THAT ALL THE CLASS MEMBERS PAY ATTORNEY PERS PROPORTIONATE TO THEIR SHARE OF THE ENCOVERY

In the instant class action, Attorney Rabb negotisted a settlement, under the terms of which, in addition to injunctive relief calculated to alleviate defendant's past practices of sex discrimination, two funds were created. One of these funds, in the ancunt of \$52,100.00 (hereinafter called Settlement Fund) was made payable to the individual plaintiffs (as opposed to class mlaintiffs) and Harriet Rabb, as attorney. The second fund (hereinafter designated as Puture Pund) includes future benefits to be given to the class plaintiffs in the form of increased salaries due to may raises and promotions. In her affidavit of May 17, 1974 Attorney Rabb estimated that the size of the Future Fund will be approximately \$120,960.00. Because of various factors, she called this a "conservative estimate." It is Attorney Rabb's contention that the total burden for attorney fees and costs should be borne by the Settlement Fund. This premise is not only inequitable, but is contrary to the applicable case law.

In Lindy Bros. Builders, Irc. of Philadelphia v. American Radiator & Standard Sanitary Corp., D.C. Pa.1972,

over this theex and that check and the next check. You're their lawyer. We will give you the check and you distribute

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7.4585

A-164

341 F. Supp. 1077, the court held, that where efforts of a claimant and his attorneys have produced a fund to be divided among all members of a particular class, claiment as the representative of the class is authorized to contract for all and to incur proper expenses of litigation, and the property produced by the efforts of such plaintiff and his attorney should bear the burden of the expenses of the attorney's services so that each member of the class who benefits will contribute his due proportion. In Philadelphia Elec. Co. v Anaconda Am. Bress Co., D.C. Pa. 1969, 47 F.R.D. 557 the court held that class plaintiffs should beer the share of attorney fees proportionate to the amount of their recovery. In City of Detroit v. Grinnel Corporatio D.C. S.D. New York, 1972, 356 F. Supp. 1380, Judge Metzner recognized that the beneficiaries of a settlement of class actions were obliged to pay their share of the cost of litigation which resulted in recovery for them. This view was followed by the Court of Appeals for the Second Circuit in the recent case of Jordan w Pusari, Docket No. 73-2364, decided April 29, 1974, which your Monor cited in your letter to counsel of May 8, 1074.

In the recent case <u>Hall v. Cole</u>, N.Y. 1973, 935. Ct. 1943, 412 U.S.1, 36 L. Ed. 2d 702 the Supreme Court

of the United States sustained the United States Court of Appeals for the Second Circuit opinion (462 F.2d 777) holding that the district court had equitable power to award attorneys' fees on "common benefit" rationale. Mr. Justics Brennan, delivering the opinion of the Court said (at p. 1946):

"Another established exception involves cases in which the plaintiff's successful litigation confers 'a substantial benefit on the members of an ascertainable class and where the court's jurisdiction over the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among them...' (t) allow the others to obtain full benefit from the plaintiff's efforts without contributing equally to the litigation expenses would be to enrich the others unjustly at the plaintiff's expense."

Other United States Supreme Court decisions supporting this view include. Central Railroad & Banking Co. v.

Pettus 113 U.S. 116, 5 S. Ct. 387, 28 L.Ed. 915 (1885);

Trustees v. Greenough, 105 U.S. 527, 26 L. Ed. 1157
(1882). In Sprague v. Ficonic National Bank 307 U.S. 161,
59 S. Ct. 777, 83 L. Ed. 1184 (1939) the United States
Supreme Court extended the rationale of these cases to
authorize an award of attorneys' fees to a successful
plaintiff who, although suing on her own behalf rather
then as representative of a class, nevertheless established the right of others to recover out of specific
assets of the same defendant through the operation of
stare decisis. On reaching this result, the Court
explained that the beneficiaries of the plaintiff's

litigation could be made to contribute to the costs of the suit by an order reimbursing the plaintiff out of the defendant's assets from which the beneficiaries eventually would recover.

Pinally, in Mills v. Electric Auto-Lite Co. 390
U.S. 375, 90 S. Ct. 616, 24 L. Ed. 2d 593 (1970), the
Supreme Court held that the rationale of these cases rust
logically extend, not only to litigation that confers a
monetary benefit on others, but also to litiration
"'which corrects or prevents an abuse which would be prejudicial to the rights and interest." of those others.

Clearly, when viewed in conjunction with the above cases. Attorney Rabb's contention, that only the named plaintiffs and not the class plaintiffs should bear the expense of litigation in the instant case, is totally without merit.

At the hearing held in cornection with the distribution of the \$52,100 Settlement Fund, Attorney Rabb informed the Court that at the time of the negotiations leading to the settlement in the instant case, the \$52,100 figure was arrived at with the understanding of the parties that of that sum between \$35,000 and \$40,000 was to be used for counsel fees. In her affidavit of May 17, 1974 she informed the Court (p.11), "...counsel sought \$36,300 which defendant paid without issue."

However, the Agreement of Settlement (6 EPD 8571 at para-

graph IIA) provides, "Within 10 days following the date this agreement pakes effect, the Company shall pay to plaintiffs and their attorneys the sum of \$52,100 in the form of a check payable to the order of Harriet Rabb, as attorney." No mention is made of the fact that of this Settlement Fund, \$36,300 was to be used for attorney fees. In fact, Ms. Rabb's position is directly at odds with the position followed by the Court of Appeals in Norman V. McKee D.C. Cal. 1968, 290 F. Supp. 29, affirmed 431 E2d 769, certiorari denied 91 S. Ct. 879, 401 U.S. 912. 27 L. Ed. 2d 811 holding that "Any proposed settlement should be presented in terms of the gross consideration to the Fund or class and the matter of attorneys' fees left for judicial determination and award." In that case the District Court wrote:

"It will be noted that, although the named plaintiffs in their complaint prayed for a court award of costs including counsel fees, they have now presented a proposed settlement providing that ISI (the defendant) will directly pay a stipulated fee of \$250,000 to counsel for named plaintiffs, one half on effective date of the settlement and the remainder within a year thereafter.

In the opinion of the court this is is not a good practice because in some cases it could be a factor making for a premature or inadequate settlement of a derivative or class action..."

This view is substantially incorporated in Court Rule 11B (Fees in Stockholder and Class Actions), applicable in the Southern District, which says in part, "Fees for attorneys or others shall not be paid upon the recovery or compromise in a derivative or class action on behalf of a corporation or class except as allowed by the court after a hearing upon such notice as the court may direct." Although the effective date of the Agreement of Settlement in the instant case was August 3, 1973, Attorney Rabb did not apply to the Court for attorney fees until May 17, 1974.

Furthermore, apparently the named plaintiffs, who were asked to approve the Agreement of Settlement were not informed of the fact that \$36,300 of the \$52,100 Settlement Fund would go to attorneys' fees. In her affidavit of May 17, 1974 Attorney Rabb wrote (paragraph 8), "Counsel undertook to represent plaintiffs and the class of all women similarly situated without any agreement as to fees to be paid plaintiffs." By submitting the Settlement to the named plaintiffs, for their approval, without informing them of the arrangement she had worked out with the defendant regarding counsel fees Attorney Rabb's conduct ran counter to the policy enunciated by the Court of Appeals for the Seventh Circuit in Air Lines Stewards and Stewardesses Associatio Loc 3 550 et al. v. American Airlines. Inc. et al. C.A. Ill. 1972, 455 F. 2d 101. The court held that notice required by Federal Rules of Civil Procedure to be given to members of class before action is dismissed or compromised must fairly apprise members of class of proposed

compromise and of options open to dissenting class members in connection with the proceedings. Federal Rule. of Civil Procedure, Rule 23 (a), 28 U.S.C.A.

In view of the foregoing, Attorney Rabb's contention that the \$52,100 Settlement Fund should bear the entire burden for attorneys' fees and costs is totally without merit. Furthermore, her assertion that under the terms of the Agreement of Settlement legal fees of between \$35,000 and \$40,000 were contemplated by the parties is also specious and so presumptuous as to usurp the function of this Court.

POINT II

ATTORNEY RABB HAS NOT PRESENTED THE COURT WITH AN EQUITABLE BASIS FOR DISTRIBUTING THE SETTLEMENT FUND

In her letter to the named plaintiffs of December 17, 1973 (annexed to my earlier memorandum as Exhibit A), Attorney Rabb indicated that the distribution she originally proposed was arrived at "on the basis of risk, burden and visibility of each named plaintiff."

At that time she did not elaborate on any of these vague, subjective criteria, and neither the Court nor the named plaintiffs were presented with the specific details of her analysis. Although she subsequently submitted affidavits to the Court in an attempt to justify her proposed

distribution, it is counsel's contention that she still has not met this burden. In <u>Purcell v. Keane U.S.D.C.</u>, Eastern District of Pennsylvania 1972, 54 F.R.D. 455, the Court said, "... it is settled law that the burden rests with the proponents of the settlement to corvince the court that it is fair."

In her affidavit of February 5, 1974, in attempting to show why Plaintiff Hurowitz's proposed share of the Settlement Fund was so much smaller (originally \$300, later raised to \$600) than the other named plaintiffs, Attorney Rabb cited the facts that Mrs. Hurowitz was with the Company (defendant) for "only" one year and left the employ of the defendant. Apparently, Attorney Rabb felt that the length of employment with the Company was one of the criteria to be used in arriving at an equitable distribution. However, Attorney Rabb did not at that time indicate to the Coult that three of the other named plaintiffs had left the Company, nor did she show how long the other named plaintiffs were employed by the Company relative to Plaintiff Hurowitz.

It wasn't until May 20, 1974 that the Court was informed of the length of employment of all the named plaintiffs in Attorney Rabb's affidavit of same date. That affidavit, incidentally, indicated that Plaintiff Hurowitz was employed for fourteen months, and not one year as Attorney Rabb had previously indicated. Also,

May 17, 1074 was the first time that the Court was informed that three of the other named plaintiffs had also left the employ of the Company. In effect, Attorney Rabb did not present the Court with all the information to which she alone was privy, and which was necessary to effect an equitable distribution of the Settlement Fund, until the Court solicited this information from her on May 17, 1074. Attorney Rabb would have had the Court adjudicate the instant dispute with incomplete and misleading information.

Further Attorney Rabb's affidavit of May 20, 1974 is misleading in that it presents the Court with data which lends itself to misinterpretation in terms of the underlying theory of damages in the instant case. Essentially, the Complaint instituting the instant action in addition to certain injunctive relief, sought monetary demages in the nature of a.) "back pay (for the named Plaintiffs) equal to the difference backers the salary paid men with equal qualifications hired at the same time as Plaintiffs and the salary received by Plaintiffs since the beginning of their employment with the Company" (Complaint paragraph VIII (D)(i) and b.) "front pay, prospectively attaching to the salaries of incumbent identifiable victims of discrimination." (Attorney Rabb affidavit of May 20, 1974). Plaintiff Hurowitz is not mkaing any claim to "front pay," but is

merely seeking her proportionate share of the Settlement Fund for back pay. In view of the fact that only incumbent named Plaintiffs and Class Plaintiffs will share the front pay, and in view of the fact that the only other monetary damages sought by the named plaintiffs was for back pay, it is Plaintiff Hurowitz's contention that the Settlement Fund reflects an award of back pay and could not have been awarded on any other basis.

Accordingly, the Length of Service column appearing in paragraph 3 of Attorney Rabb's affidavit of Mry 20, 1974 should only reflect the length of service prior to August 3, 1973, the effective date of the Agreement of Settlement, as length of service after that date is referrable only to front pay. However, Attorney Rabb has included total employment time (prior to, and after August 3, 1973) in her affidavit, and is misleading the Court in its attempt to equitably distribute the Fund. Consonant with the above, the table presented to the court should be amended to reflect time spent with the Company prior to August 3, 1974. A Further, counsel questions the propriety of employment time including time spent with companies in the Bell System other than New York Telephone.

In her memorandum, at p. 4, Attorney Rabb indicated that the \$600 distributed to Plaintiff Eurowitz "should be adequate to compensate her for filing her EEOC charge

against the Company." This statement does not take into account that Mrs. Murowitz later became a named plaintiff in the instant action, nor does it take into account the fact that Mrs. Hurowitz was suing the Company for back pay (Complaint D(i)). Even a first year law student knows that a recovery in a lawsuit does not reflect reimbursement for signing the complaint. Rather, the recovery should represent the damages offered, which in the instant case amounts to back pay lost through the defendant's discriminatory practices.

In addition to their proportionate share of the Settlement Fund representing back pay lost and front pay which the incumbent named plaintiffs will receive as class benefits, the named plaintiffs who remained with New York Telephone Company (after the effective date of the Agreement of Settlement) have received or will receive additional benefits. Under the terms of the Agreement of Settlement, 6 EPD 8871, Plaintiffs Principe and Wanio were promoted (from salary grade 5) to Grade 7 Assistant Dial Service Supervisor positions with commensurate salary increases of at least \$2,000 per annum. In addition they are to receive special supervisory and technical training such as will enable them to be promoted to permanent Grade 10 positions no later than August 1, 1974, if their performance is assessed satisfactorily. Additionally, the Agreement

provided that the Company shall use its best efforts to arrange for Plaintiff Gedeon to be placed in a permanent Grade 7 position (or its equivalent) at the Bell System company by which she is then employed. Further, the Company shall use its best efforts to have Plaintiffs Gedeon and Malinowski scheduled at an early date for assessment at an Assessment Center, and if assessed satisfactorily, the Company shall use its best efforts to arrange for their promotion, to permanent Grade 10 positions (or their equivalent) no later than August 1, 1974 and the Company will provide for special training or assistance to facilitate the successful performance of their new job duties.

In view of the foregoing, the Court can readily see that the incumbent Plaintiffs are in fact receiving benefits in addition to back pay. When viewed in this context, Attorney Rabb's statement (in paragraph 10 of her affidavit of May 20, 1974), "In sum, any employee who had left the Company, as had Ms. Hurowitz, at the time the decree was entered would not hav? received either the benefit of the considerable affirmative relief or the salary increments effected.," is meaningless. Plaintiff Hurowitz is not asking for affirmative relief in terms of training or promotion, or for a salary increment. She is merely asking for her fair share of the back pay awarded.

It is Plaintiff Hurowitz' contention that the distribution of the Settlement Fund is completely arbitrary and has no basis in objectivity. For example, in her affidavit of May 20, 1974 Attorney Rabb wrote (paragraph 5), "Another factor considered in the distribution was that once the action was filed, plaintiffs, all of whom except Ms. Hurowitz continued to be employed by the defendant, were exposed to the risk that their employment would be adversely affected by their plaintiff status." However, when counsel for Plaintiff Hurowitz suggested that his client had also been harrassed past filing her EEOC complaint, that her participation in the instant action may have jeopardized her future employment and/or advancement with the Company and that her participation may have deleterious effects with regard to references should Mrs. Hurowitz seek employment with another company (memorandum p.9), Attorney Rabb dismissed this with, "The speculation about the future effect of Ms. Hurowitz's (sic) not having withdrawn from the suit when she withdrew from the company is impossible to quantify." (Harriet Rabb Memorandum pp. 4-5.) Attorney Rabb herself recognized the need for an objective criterion in distributing the Settlement Fund when she wrote in her affidavit of May 20, 1974, (paragraph 5), "Furthermore, there is no way of measuring the extent to which participation

in this law suit resulted in less than optimal ratings in annual performance and salary reviews of incumbent plaintiffs." And yet Attorney Rabb wants the Court to accept her assessment of the "risk, burden and visibility of each named plaintiff"! Consonant with the need for an objective standard, counsel has prepared a Proposal (infra) which will enable the Court to distribute the Settlement Fund equitably. In her affidavit of May 20, 1974 Attorney Rabb

wrote (paragraph 6):

"Incumbent named plaintiffs were actively in-volved in the pre-trial stages of this litigation and that involvement constituted another factor in making the distribution...Because the data we needed was developed after Ms. Hurowitz quit work, despite her intention to be helpful where possible, there was really no way she could have been of assistance to us in gathering the information."

Here we see Attorney Rabb conceding that Plaintiff Hurowitz remained willing and available to aid in bringing the instant action to a successful conclusion. Yet, she did not call upon Mrs. Hurowitz to participate more actively. In view of the fact that the course of the litigation was under Attorney Rabb's control, Plaintiff Hurowitz should not now be penalized for not being asked to take a more role by her former attorney.

In Tinnett v. Liggett & Myers Tobacco Co., D.C.N.C., 1970, 316 F. Supp. 292, the court held that because patterns of conduct sometimes perpetuated effects of prior discrimination, it becomes relevant to consider past practices,

policies and acts of defendants in determining liability under this subchapter.(42 U.S.C. Sec. 2000e-5).

The probative value of earlier discriminatory employment practices was also recognized in <u>Buckner v. Goodvear Tirelander Rubber Co.</u>, D.C.Ala., 1972, 339 F.Supp. 1108, affirmed 476 F.2d 1287 and in <u>Evans v. Local 2127</u>, International <u>Brotherhood of Electrical workers, Art-CIO.</u> D.C.Ga., 1969, 313 F.Supp. 1354. These cases support the view that if in fact Attorney Rabb wanted Mrs. Hurowitz to participate more actively, her testimony or other aid would have been both relevant and of probative value. Attorney Rabb's contention that Plaintiff Hurowitz "could have been of no assistance" is patently inaccurate.

On the issue of back pay, the courts have recognized that it is a valid measure of damages in a Title VII action. In Arkansas Education Association et al.

v. Board of Education of the Portland, Arkansas School

District, U.S. Court of Appeals for the Eighth Circuit,
1971, 446 F.2d 763, the court held that because the school district systematically and without exception paid black teacher substantially less than white teachers, and because this was constitutionally impermissible, all black teachers were entitled to recover the difference between what they were actually paid and what they would have been paid if all teachers had been treated equally. It is the same theory of damages that led to

the creation of the Settlement Fund in the instant action.

In Moody v. Albemarle Paper Company, 474 F.2d 134, (1973), the United States Court of Appeals for the Fourth Circuit, citing Newman v. Piggie Park Enterprises. 390 U.S. 400, 88 S.Ct. 964, 19 L.Ed.2d 1263 (1968) held:

"Because of the compensatory nature of a back pay award and the strong congressional policy embodied in Title VII, a district court must exercise its discretion as to back pay in the same manner it must exercise discretion as to attorney fees under Title II (sic) of the Civil Rights Act...Thus a plaintiff or a complaining class who is successful in obtaining an injunction under Title VII should ordinarily be awarded back pay unless special circumstances would render such an award unjust...Because there are no such special circumstances here, on remand the district court should include an award of back pay in its order. It is to be remembered, of course, that a back pay award is limited to damages which are actually suffered."

PROPOSAL (CONCLUSION)

Counsel for Plaintiff Hurowitz, having shown that the prior distribution in the instant case was totally subjective and lacked any objective criteria, hereby proposes a plan of distribution which will effectively ald the Court in equitably distributing the Settlement Fund.

This plan assumes that the Court will allow counsel fees in the amount of \$36,300 to Attorney Rabb. It further assumes that the Court will allow counsel fees in the

amount of \$2500 to counsel for Plaintiff Murowitz based on 5 hours inspection of file, 33 hours preparing first memorandum, 8 hours preparing for hearings, 2 hours for hearings and 26 hours for preparation of this post-hearing memorandum, for a total of 74 hours. Precedent for the \$2500 counsel fee may be found in the equitable jurisdiction of this Court as enunciated by the Court of Appeals for the Second Circuit in City of Detroit v. Grinnel Corporation, Docket Nos. 73-1211, 73-1420, decided March 13, 1974 (cited in your Honor's letter to counsel of May 8, 1974). The total for legal fees is \$38,800.

The plan first calls for apportioning the liability for attorneys' fees to the respective funds created by the attorneys' efforts. In the instant case the attorneys' efforts created the Settlement Fund of \$52,100, and what counsel designated in Point I, supra, as the Future Fund in the amount of \$120,960. The Total Recovery (Settlement Fund plus Future Fund) amounts to \$173,745. The proportion of legal fees referable to the Settlement Fund is found with the following formula:

Settlement Fund X (legal fees) = amount of legal fees to be paid from Settlement Fund

Mathematically the result is as follows: \$52,100 X (\$38,800)

=.2998647 X \$38,800 = \$11,634.75

The sum of \$11,634.75 represents the proportionate share of legal fees to be deducted from the Settlement Fund.

The next step calls for the deduction of the proportionate share of legal fees from the Settlement Fund and it leaves us with the Net Fund to be distributed to the named plaintiffs:

(Settlement Fund) less (Proportionate Share) = (Net Fund)

(\$52,100) - (\$11,634.75) = \$40,465.25

Before the Net Fund can be distributed to the named Plaintiffs, we must first find out how much back pay was lost by each named plaintiff. Six of the Plaintiffs entered the company at Salary Grade 5, which paid a salary of Sll, 400 per annum. (5EPD 7377). Men entering the Company at the same time were being paid at Salary Grade 10, which gave them an annual wage of \$16,800. The difference between these two sums represents the annual disparity between men at Grade 10 and women at Grade 5, and thus represents the back pay sued for by women at Grade 5 on an annual basis:

Grade 10 (men) = \$16,800 less Grade 5 (women) = -11,400 \$ 5,400 = annual back pay sued for (Grade 5)

To find the monthly back pay lost by women at Grade 5, we divide \$5,400 by 12:

\$5,400 = \$450 = monthly back pay lost by women at Grade 5.

However, not all of the named Plaintiffs entered the Company at Grade 5. Plaintiffs Booth and Leisner entered at Grade 7, with an annual salary of \$13,300. To calculate their annual back pay deficit, we subtract their annual

salary of \$13,300 from the annual salary at Grade 10:

Grade 10 (men) = \$16,800 less Grade 7 (women) = -11,400 \$ 3,500 = annual back pay sued for (Grade 7)

To find the monthly back pay lost by women at Grade 7, we divide \$3,500 by 12:

 $\frac{\$3,500}{12}$ = \$291.67 = monthly back pay lost by women at Grade 7.

It is now necessary to calculate the number of months for which the named Plaintir's worked for the lower salary prior to August 3, 1973, the effective date of the Agreement of Settlement. (see Point II at p.12, supra.)

By multiplying the number of months each named

Plaintiff worked at the Company prior to August 3, 1973

by the monthly back pay lost, we arrive at the total

back pay lost by each named Plaintiff:

(# mos. prior to Aug.3,1973) X (monthly back pay lost)
= total back pay lost by each named Plaintiff

Once we have a figure for the back pay lost by each named Plaintiff, we add up all these sums and have the back pay lost by all named plaintiffs. Counsel has done this on the Schedule that follows. The total back pay lost by all the named plaintiffs amounts to \$81,716.86.

All that remains to be done at this point is to give each named Plaintiff her proportionate share of the Net Fund. This is accomplished with the following formula:

Back pay of each named plaintiff X (Net Fund)
Total back pay of all named plaintiffs

= Equitable Share of Each Named Plaintiff.

By way of example, Plaintiff Principe worked at Grade 5 for 32 months prior to August 3, 1973. Accordingly, she lost back pay at a rate of \$450 per month:

(Months) X (Rate) = back pay lost 32 X \$450 = \$14,400

back pay of Plaintiff Principe X (Net Fund)

= Plaintiff Principe's Equitable Share.

\$14,400 \$81,710,86 X \$40,405.25 = \$7,130.71 = Plaintiff Principe 5 Share.

The last column in the following schedule represents a calculation of each named plaintiff's equitable share (as above), and should be the basis of the Court's distribution of the Settlement Fund.

| | PLAINTIFFS | # MOS. BACK PAY | RATE/MONTH |
|------|------------|-----------------|------------|
| | | | |
| | PRINCIPE | 32 | \$450.00 |
| | воотн | 35 | 291.67 |
| | MALINOWSKI | 26 | 450.00 |
| | GEDEON | 26 | 450.00 |
| | WANIO | 23 | 450.00 |
| | MILKMAN | 23 | 450.00 |
| | LEISNER | 23 | 291.67 |
| -23- | HUROWITZ | 14 | 450.00 |
| | | | |
| | | | |
| | | 1 | |
| | | | |

| BACK PAY EA. PLTF. | BACK PAY EA, PLTF. X NET FUND. |
|---------------------|--------------------------------|
| | , |
| \$14,400.00 | \$7,130.71 |
| 10,208.45 | 5,055.11 |
| 11,700.00 | 5,793.71 |
| 11,700.00 | 5,793.71 |
| 10,350.00 | 5,125, 20 |
| 10,350.00 | 5,125.20 |
| 6,798.41 | 3, 321, 93 |
| 6,300.00 | 3,119.68 |
| \$81,716.86 = Total | \$40,465,25 = Net Fund |

Respectfully submitted,

Wasserman, Chinitz, Geffner & Green
By: Kenneth R. Fields
Attorneys for Plaintiff Hurowitz

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

SUSAN WAGNER LETSNER, KAREN MALINOWSKI, LINDA GEDEON, CECTTA HUROWITZ, MYROSLAWA WANIO, VICTORIA PRINCIPE, MARCARET KECK MILKMAN and JANE BOOTH, Individually and on behalf of all other persons similarly situated,

Plaintiffs,

NEW YORK TELEPHONE COMPANY,

Defendant.

APPEARANCES

WASSERMAN, CHINITZ, GEFFNER & GREEN 41 East 42nd Street New York, New York 10017

#4083/

Attorneys for Plaintiff Hurowitz

HARRIET RABB EMPLOYMENT RIGHTS PROJECT 435 West 116th Street New York, New York 10027

Attorney for Plaintiff's and Pro Se

CONSTANCE BAKER MOTLEY, D. J.

A-199

54

Memorandum Opinion and Order

Plaintiff Hurowitz asks this court to set aside its order of March 15, 1974 under which plaintiffs' attorneys received a fee of \$36,300, and the named plaintiffs received varying amounts of the Settlement Fund of \$52,100 awarded under "II.A." of the Agreement of Settlement adopted as the judgment of the court by order of September 19, 1973. In light of the directives of City of Detroit et al. v. Grinnell Corp., F.2d ___ (2d Cir., decided March 13, 1974) (Docket Nos. 73-1211, 73-1420) which indicated both the standards for determining appropriate counsel fees and the advisability of holding a hearing to establish the basis on which said fees are to be awarded. the court held a hearing on May '7 and 20, 1974. On the basis of the material presented at the hearing, and the memoranda and affidavits received in relation to the question of the size and more particularly the source of attorney fees and the appropriate award to be made to each of the eight named plaintiffs, the court is of the view that the distribution made in the court's order of March 15, 1974 was equitable and should be adhered to.

By way of summary, the court notes that an attorney fee of \$36,300 for 789 1/2 hours of work amounts to a rate of less than \$50, per hour. Given the fact that plaintiffs' counsel are

Plaintiff Murowitz has two principal objections to the distribution of the Settlement Fund and the granting of attorney fees in this case. First, she contends that the amount awarded to her was too small in relation to the amounts received by the remaining named plaintiffs. Plaintiff Murowitz received \$600, whereas the other named plaintiffs received amounts varying from \$1,457 to \$2,957. Secondly, plaintiff Murowitz argues that the fee awarded attorney Rabb and her associates was both excessive and, insofar as it inevitably decreased the monetary award to the named plaintimes, should have been derived from sources other than the Settlement Panel.

quantify, since the relief is essentially equitable, it has been

agreed that it is worth at least \$173,745. The \$36,300 figure

is, therefore, approximately 21% of that total.

With regard to plaintiff Hurowitz' first objection, the court is convinced that the \$600 which the named plaintiffs collectively decided to award her was adequate reimbursement for

her participation, risk, and visibility in the instant suit. The extent of plaintiff Hurowitz' contribution to this suit was limited to her having filed sex discrimination charges with the Equal Employment Opportunity Commission (E.E.O.C.). While this is a necessary prerequisite for a federal suit of this nature, insofar as other plaintiffs similarly filed, her particular notification to the E.E.O.C. was not essential to the successful invocation of dederal jurisdiction. Further, unlike the other named plaintiffs, plaintiff Hurowitz was no longer in the employ of defendant when this suit was filed. She was therefore unable, despite her acknowledged willingness, to contribute relevant information about defendant's continuing challenged practices. Such information was at best difficult to obtain from defendant, and only through the careful observation by currently employed plaintiffs could the nature and method of defendant's practices be ascertained. Such information was of course necessary for the meaningful negotiations between plaintiffs and defendant which ultimately resulted in the Agreement.

Finally, since the Agreement of Settlement made no provision for back pay, but instead focused on future remedial practices, plaintiff Hurowitz' claim that her share of the

ment prior to the settlement as compared to the past employment of other named plaintiffs is simply without merit.

Specific monetary awards under "IT.A." were not intended as back pay or to remedy any alleged discriminatory past practices, but rather as reimbursement geared to the individual named plaintiff's role as plaintiff. As a plaintiff, Hurowitz incurred none of the harassment alleged by other named plaintiffs during the pendency of the litigation. As a plaintiff, Hurowitz' participation was rendered useless, through her voluntary termination of employment with defendant.

attorney fees awarded in this case should be derived from the class generally rather than from the Sattlement Fund, this suggestion is both inequitable and incompatible with the history and outcome of this litigation. Attorneys fees in litigation under Title VII of the Civil Rights Act of 1964 (42 U.3.C. § 2000e et seq.) can be allowed to the prevailing party under 42 U.S.C.§ 2000e-5(k). Where a plaintiff or her class prevails at trial it is logical, under the "private attorneys general" theory of attorney fees, that defendant be responsible for the cost of bringing the litigation. Here, of course, the case was settled before trial. Delendant has admitted nothing in terms of

liability but has agreed to a compromise guaranteeing substantially all the affirmative relief sought by plaintiffs, and further agreed under "II.A." to "Payments. . . to Plaintiffs and their Attorneys. . . " (emphasis added). In other words, it was contemplated by the parties to the Settlement that defendant should bear the plaintiffs' attorneys fees. The court finds that it is preferable that the defendant who agreed to do so should bear the cost of attorneys fees rather than the plaintiff class. This is especially so where the benefits conferred on plaintiffs are primarily equitable as opposed to monetary in nature.

approving a plan under which plaintiifs were to receive job advancements and higher pay, to order that the pay or part of it, so obtained be thereafter lowerded to plaintiffs lawyers. It was apparently contemplated by the parties that the benefits conferred by the settlement be real. It was the understanding of the court that the Agreement of Settlement contained tangible benefits for the class in consideration for discontinuing the suit when the court SO ORDERED and adopted the Agreement. The court will not now after the burden of attorneys fees as suggested by plaintiff Hurowity, in a canner which would shift that burden from the defendant which agreed to assume it to an unsuspecting class.

-8-

Pirally, with respect to "ttorney Fields' request for attorney fees, as plaintiff Hurowitz' counsel, said application is denied. The court is of the view that attorney fees under 42 U.S.C. § 2000e-5(k) are to be allowed only where counsel acting as a "private attorney general" has vindicated the rights not to be discriminated against embodied in the remainder of that statute. Pipintiff Hurowitz' present claim was not of that nature. Nor has plaintiff Hurowitz claimed or demonstrated that the party opposing the present motion has been obdurate or proceeded in bad faith so as to justify an award of counsel fees. Stolberg v. Members of Bd. of Trustees for State College of Connecticut, 474 F.2d 485 (2d Cir. 1973). Finally, plaintiff Hurowitz' present claim has not created a "common fund" out of which Mr. Fields' fees could be drawn. Cf. Jordan v. Fusari, F.7d (2d Ci). decided April 2", 1974) (Docket No. 73-2364). Indeed, the court has concluded that no inequity was demonstrated after having prought this matter to the court's attention.

The order of this court, filed March 15, 1974, remains in effect.

Dated: New York, New York

June 12, 1974

SO OFDERED

CONSTANCE AAKLE MOTLEY

U.S.D.J.

FOOTNOTES Plaintiff Milkman and plaintiff Principe, 1. for example, made complaints of harassment and surveillance on the job to the E.E.O.C. (See Affidavit of Harriet Rabb, filed May .20, 1974, Exhibits B and C).

A-206

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Index No. 74-2006

LEISNER et al ..

Plaintiff

against

New York Telephone Company,

ATTORNEY'S
AFFIRMATION OF SERVICE
BY MAIL

Defendant

STATE OF NEW YORK, COUNTY OF New York

. 00

The undersigned, ettorney at law of the State of New York affirms: that deponent is Kenneth R. Fields attorney(s) of record for

Petitioner-Appellant Cecilia Hurowitz

That on October 7,

1974 deponent served the annexed Brief & Appendix

A Harriet Rabb, Esq.

attorney(s) for Appellee & Pro Se

in this action at 435 West 116thh St., New York, N.Y. L))@&

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

The undersigned affirms the foregoing statement to be true under the penalties of perjury.

Dated

Oct. 7, 1974

Kennia pro tianed will pergrinted beneath

Attorney at Law